

Log No. \_\_\_\_\_

Contract No. \_\_\_\_\_

**DHS CONTRACT FOR SERVICES**

**CONTRACTING PARTIES:** This Contract is between the following Division, Office or Unit of the Utah Department of Human Services ("DHS"):

\_\_\_\_\_ (insert name and address of Division/Office/Unit) in the \_\_\_\_\_ Region (insert name and address of the Region, if any) (referred to in this Contract as "DHS/\_\_\_\_\_") (insert an abbreviated name for the appropriate Division, Office or Unit of DHS)

AND

Name: \_\_\_\_\_

Address: \_\_\_\_\_

IRS No.: \_\_\_\_\_

- ☐ Sole Proprietor  
☐ For-Profit Corporation  
☐ Charitable Foundation

- ☐ Partnership  
☐ Not-for-Profit Corporation  
 Limited Liability Company (LLC):  
☐ LLC/Sole Proprietor,  
 or  
☐ LLC/Partnership

- ☐ Government Agency  
☐ Joint Venture  
☐ Other Type: \_\_\_\_\_

(referred to in this Contract as the "Contractor").

**QUESTIONS REGARDING THIS CONTRACT:** The Contractor may direct any inquiries about this Contract to DHS/\_\_\_\_\_ 's Representative as follows:

Title: \_\_\_\_\_ Name (Optional): \_\_\_\_\_

Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

**TABLE OF PROVISIONS IN THIS CONTRACT**

- PART I: GENERAL PROVISIONS**  
**PART II: SCOPE OF WORK AND SPECIAL CONDITIONS**  
**PART III: PERFORMANCE MEASURES AND CLIENT OUTCOMES**  
**PART IV: CONTRACT COSTS, BILLING AND PAYMENT INFORMATION**  
**PART V: COST ACCOUNTING PRINCIPLES AND FINANCIAL REPORTS**  
**PART VI: BUDGETING PRINCIPLES AND FORMS**  
**PART VII: SUMMARY OF SOME COMMONLY-APPLICABLE LAWS AND POLICIES**  
**PART VIII: DISCLOSURE OF LOBBYING ACTIVITIES**  
**PART IX: JURISDICTION, COPYRIGHT AND OTHER GENERAL PROVISIONS**

**ATTACHMENTS**

*(Please check all appropriate boxes to indicate the documents attached to this Contract. Name the attachment(s) using the next consecutive letter in the alphabet. Describe the attachment(s)):*

- ☐ ATTACHMENT \_\_\_\_: Sole Source Provider Approval  
☐ ATTACHMENT \_\_\_\_: Self-Insurance Approval (statement from the DHS Deputy Director)

**OTHER ATTACHMENTS:** (Requires prior approval from BCM)

## PART I: GENERAL PROVISIONS

### SECTION A: CONTRACT DESCRIPTION AND SPECIFICATIONS

1. **PURPOSE AND SCOPE OF CONTRACT:** *Briefly describe the services Contractor will provide under this Contract. (Example: "Contractor will provide residential treatment services for 16 clients of the Division of Juvenile Justice Services.")*

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Part II ("Scope of Work and Special Conditions") and Part III ("Performance Measures and Client Outcomes") of this Contract describe in more detail the services and activities the Contractor shall provide under this Contract. The Contractor shall use the funds paid by DHS/\_\_\_\_\_ under this Contract only for the purposes specified in this "Purpose and Scope" section and in Parts II and III. The Contractor represents that it has the financial, managerial and institutional capacity to fully comply with the requirements of this Contract.

2. **CONTRACT PERIOD AND RENEWAL PROVISIONS:**

- a. **Contract Period:** This Contract is effective as of \_\_\_\_\_ (*insert date*) and terminates on \_\_\_\_\_ (*insert date*), unless terminated sooner in accordance with the terms and conditions of this Contract. Contracts in excess of one year may be reviewed annually by DHS/\_\_\_\_\_.
- b. **Contract Renewal:** With respect to any contract issued as a result of a Request for Proposal ("RFP"), DHS/\_\_\_\_\_ shall have the unilateral right to initiate renewal of the contract in accordance with the provisions of the RFP. The RFP includes the following renewal provision:

*Insert the exact language of the RFP's renewal provision here:*

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3. **TYPE OF CONTRACTOR:** The Contractor is a (*check ONE*):

- ☐ **"Service Provider."** A service provider is a private or governmental entity that receives funds from DHS/\_\_\_\_\_ for services provided to clients of DHS/\_\_\_\_\_ under a program developed by DHS/\_\_\_\_\_.
- ☐ **"Subrecipient."** A subrecipient is a non-federal governmental entity or a non-profit or for-profit organization that develops and operates its own program of services for eligible clients, and that receives federal and/or state funds from DHS/\_\_\_\_\_ or another entity which serves as a "recipient" and "pass-through entity" for such funding.

(**State Funded Contracts.** If this Contract is funded solely by *State* funds, but the Contractor operates its own program of services for eligible clients, the Contractor shall comply with the financial record-keeping and reporting requirements that apply to federally-funded subrecipients.)

4. **TYPE OF CONTRACT:**

a. **Method Used to Calculate Contractor's Compensation.** This Contract is a:

*(Check ONE of these two options):*

☐ **"Unit of Service" (Rate-Based) Contract.** DHS/\_\_\_\_\_ 's payment to the Contractor is based on individual units of service provided by Contractor, payable at the allowable rate established by DHS. If and when DHS/\_\_\_\_\_ refers clients to the Contractor for services, DHS/\_\_\_\_\_ shall pay the Contractor no more than the rates specified in Part IV ("Contract Costs, Billing and Payment Information") for the Contractor's services under this Contract. If DHS/\_\_\_\_\_ and the Contractor have negotiated a rate that is lower than the standard rates set by DHS, DHS/\_\_\_\_\_ shall pay the Contractor at that lower, negotiated rate. *(This type of contract may provide for either a "Fixed Amount" or a "Non-Fixed Amount" type of contract payment.)*

☐ **"Cost Reimbursement" Contract.** DHS/\_\_\_\_\_ 's payment to the Contractor is based on supporting documentation from the Contractor showing that the service costs were necessary, reasonable and actually incurred by the Contractor in providing the services required by this Contract. Unless expressly stated otherwise in Paragraph (5) of this Section ("Type of Contract Payments"), the Contractor shall bill DHS/\_\_\_\_\_ only for actual costs allowable under federal and DHS cost principles, and shall maintain records that adequately support such costs. *(This type of contract must always provide for a "Fixed Amount" type of contract payment.)*

b. **DHS/\_\_\_\_\_ 's Discretion About Client Placements (*Client Service Contracts*).** DHS/\_\_\_\_\_ gives the Contractor no express or implied guarantee or representation that it will place any clients or maintain any client placements with the Contractor.

c. **Billing Procedures and Cost Principles.** See Part IV ("Contract Costs, Billing and Payment Information") for additional provisions about billings and Part V ("Cost Accounting Principles and Financial Reports") for applicable cost principles.

5. **TYPE OF CONTRACT PAYMENTS:**

**Basis for Contractor's Compensation.** DHS/\_\_\_\_\_ shall compensate the Contractor as follows:

*(Check ONE of these two options):*

Does this Contract have a maximum amount?

If no, check this box

☐

a. **Non-Fixed Amount ("Open-Ended"):** DHS has not set a limit or cap for the total payment the Contractor may receive for providing services under this Contract. (Contractor's compensation must comply with the standard rates established by DHS or any lower negotiated rates the parties have agreed upon.)

If yes, check this box

☐

b. **Fixed Amount ("Closed-Ended" or "Defined Total"):** DHS/\_\_\_\_\_ defines or limits the total dollar amount that DHS/\_\_\_\_\_ shall pay the Contractor for providing services under this Contract. The Contractor shall ensure that its costs and billings do not exceed the Fixed Amount for this Contract. See Part VI ("Budgeting Principles and Forms") for additional budgeting provisions.

This Fixed Amount (Closed Ended/Defined Total) Type of Contract Payment requires the Contractor to provide the following level of services in order to qualify for payment under this Contract:

*(Check ONE of these three options):*

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**"Actual Services/Approved Budget":** DHS/\_\_\_\_\_ shall pay the Contractor not more than \$\_\_\_\_\_ (*insert the Fixed Amount*) for providing the services under this Contract, but DHS/\_\_\_\_\_ shall make such payments only if DHS/\_\_\_\_\_ places clients with the Contractor and only if the Contractor actually provides the services to the clients. Payments are based on the Contractor's approved budget and documented actual costs. This is a "cost-reimbursement" contract. (*When this box is checked, the "Cost Reimbursement" box in Part IV, Paragraph #1 must also be checked.*)

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**"Actual Services/Rate Based":** DHS/\_\_\_\_\_ shall pay the Contractor not more than \$\_\_\_\_\_ (*insert the Fixed Amount*) for providing services under this Contract, but DHS/\_\_\_\_\_ shall make such payments only if DHS/\_\_\_\_\_ places clients with the Contractor and only if the Contractor actually provides the services to the clients. Payments are based on DHS "Unit of Service" rates listed in Part IV of this Contract ("Contract Costs, Billing and Payment Information.") (*When this box is checked the "Unit of Service" box in Part IV, Paragraph #1 must also be checked.*)

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**"Guaranteed Minimum":** DHS/\_\_\_\_\_ shall pay the Contractor \$\_\_\_\_\_ (*insert the Fixed Amount*) for maintaining the facilities and programs required by this Contract, and DHS/\_\_\_\_\_ shall pay this Fixed Amount regardless of the number of clients DHS/\_\_\_\_\_ actually places with the Contractor, provided that the Contractor shall accept the clients that DHS/\_\_\_\_\_ refers to the

Contractor, up to the maximum number of clients specified in Part IV  
("Contract Costs, Billing and Payment Information.")

Are there conditions under which the guaranteed minimum will be  
increased by additional payments?

☐ No

☐ Yes

If yes, indicate whether the additional payments are:

☐ rate-based (Actual Services/Rate Based)

☐ budget-based (Actual Services/Approved Budget)

6. **REDUCTION OF FUNDS IN CONTRACTS WITH A FIXED AMOUNT TYPE OF CONTRACT PAYMENT:** If an order by the Legislature or the Governor, or a federal or state law reduces the amount of funding to DHS/\_\_\_\_\_, or if the Executive Director of DHS decides to reduce the payments under this Contract, DHS/\_\_\_\_\_ may terminate this Contract or proportionately reduce the services required by this Contract and the amounts to be paid by DHS/\_\_\_\_\_ to the Contractor for such services. In addition, if the Contractor defaults in any manner in the performance of any obligation under this Contract, or if DHS/\_\_\_\_\_ determines that Contractor is significantly underutilizing funds, DHS/\_\_\_\_\_ may, at its option, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or underutilization of funds. DHS/\_\_\_\_\_ shall give the Contractor thirty (30) days notice of any such reduction or termination. Notwithstanding the foregoing, DHS/\_\_\_\_\_ shall reimburse the Contractor in accordance with the original provisions of this Contract for all services performed before the effective date of the reduction or termination.

If the Type of Contract Payment is a Fixed Amount, and if DHS/\_\_\_\_\_ reduces the payments under this Contract, the Contractor may make a proportionate reduction in the amount of services performed or in the number of clients served under this Contract. The Contractor shall notify DHS/\_\_\_\_\_ in writing no less than ten (10) working days before it implements any such reductions in services or client numbers.

7. **COMPLIANCE WITH PROCUREMENT REQUIREMENTS:**  
(Check Section "a" OR Section "b" OR Section "c". In addition, if you check Section "c," check any box that indicates why this Contract is exempt from the bidding process, AND **attach a letter in which you document the basis for the exemption.**)

- a. ☐ This Contract is entered into as the result of a competitive procurement process on Requisition No.\_\_\_\_\_.
- b. ☐ The Contractor is a governmental entity.
- c. ☐ This Contract is exempt from the bidding process because:

***(Check all that apply):***

- ☐ The Contractor is a sole source for this service.

- ☐ This Contract has been awarded without bids due to an emergency.
- ☐ DHS/\_\_\_\_\_ contracts with all entities offering this service.

8. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:** This Contract incorporates the following documents by reference:

- a. All documents specified in this Contract and its attachments;
- b. If this Contract is issued as a result of a Request for Proposal ("RFP") from DHS/\_\_\_\_\_:
  - (i) RFP No. \_\_\_\_\_, as well as all terms and requirements of that RFP, provided, however, that if any terms or provisions of the RFP are inconsistent with the provisions of this Contract, the provisions of this Contract shall govern;
  - (ii) The Contractor's Proposal to RFP No. \_\_\_\_\_, as well as all documents attached to the Contractor's Proposal; and
- c. All statutes, regulations, or governmental policies that apply to the Contractor or to the services performed under this Contract, including any applicable laws relating to fair labor standards, the safety of Contractor's employees and others, zoning, business permits, taxes, licenses, and incorporation or partnership, and any laws mentioned in Part I, Section C of this Contract ("Contractor's Compliance with Applicable Laws") or in the attachments to this Contract. Contractor acknowledges that it is responsible for familiarizing itself with these laws and complying with them.

9. **NO IMPOSITION OF FEES (Client Service Contracts):** The Contractor shall not charge clients for any services provided under this Contract, except as expressly authorized in writing by DHS/\_\_\_\_\_.

**SECTION B: CONTRACTOR'S LEGAL STATUS AND INDEMNIFICATION RESPONSIBILITIES**

1. **CONTRACTOR IS AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind DHS/\_\_\_\_\_ or any state agency to any agreements, settlements, or liability. However, if the Contractor is another state agency, nothing in this Contract shall be construed to limit the Contractor's authority to bind itself to agreements, settlements or liability, as long as such agreements, settlements or liability affect only itself and not DHS/\_\_\_\_\_. The Contractor is not authorized to act as an agent for DHS/\_\_\_\_\_, except as expressly provided in this Contract. Persons employed by DHS/\_\_\_\_\_ and acting under direction of DHS/\_\_\_\_\_ shall not be deemed to be employees or agents of the Contractor. Likewise, persons employed by the Contractor and acting under the direction of the Contractor shall not be deemed to be employees or agents of DHS/\_\_\_\_\_ except as expressly provided in this contract. As an independent contractor, the Contractor is responsible for its own operations and for providing the office space, supplies, equipment, tools, and other supports necessary to

provide the services covered by this contract unless specifically stated otherwise in the contract Scope of Work. The compensation paid to the Contractor under this Contract shall be Contractor's total compensation from DHS/\_\_\_\_\_ for the services provided under this Contract and the Contractor is responsible for the payment of any and all tax liabilities incurred as a result of the compensation received.

2. **CONTRACTOR MUST PROVIDE INSURANCE AND INDEMNIFICATION:**

- a. **Required Insurance.** The Contractor shall maintain adequate protection against liability as specified in this Contract. Specifically, unless DHS' Deputy Director for Support Services gives prior written consent to a different arrangement, the Contractor shall maintain commercial insurance or self-insurance for the dollar amounts and types of coverage specified in this Contract. Any commercial insurance shall be obtained from insurance companies authorized to do business in the State of Utah and rated "A-" or better with a financial size category of Class VII or larger, according to the ratings and financial size categories published by A.M. Best Company at the time this Contract is executed.

Commercial insurance may be obtained from an insurance company that does not meet the above stated A. M. Best Company rating and/or class size, **if** the Contractor provides documentation verifying the insurance company providing the Contractor's insurance **is reinsured** by another affiliated insurance company that **does meet** the required rating and class size requirements.

The Contractor's insurance policy shall include an endorsement that names the State of Utah, DHS, DHS/\_\_\_\_\_ and their officers and employees as additional insureds, and the policy shall provide the State of Utah, DHS, DHS/\_\_\_\_\_ and their officers and employees with primary coverage (not contributing coverage) for any liability arising as a result of the Contractor's acts or omissions in connection with this Contract. The Contractor is not required, however, to obtain an "additional insured" endorsement for any professional liability insurance policy or Workers' Compensation insurance policy (*See* subsections (2)(c)(1)(c), (2)(c)(3) and (2)(d) of this provision ("Contractor Must Provide Insurance and Indemnification."))

- b. **Deductibles and Similar Costs.** The Contractor shall be responsible for paying any deductibles, self-insured retentions or self-insurance costs. The deductible for the insurance policies required by this Contract may not exceed \$1,000.00, unless the Contractor obtains prior written approval of the deductible (and the corresponding policy) from DHS/\_\_\_\_\_.

c. **Types of Liability Protection the Contractor Must Provide:**

- (1) **Private Contractor—Commercial Insurance Required:** If the Contractor is not a governmental entity of the State of Utah, the Contractor shall maintain the following policies of liability insurance at its sole expense during the term of this Contract, unless the Contractor has already satisfied the requirements of the "self-insurance" provision (subsection (2)(c)(2)) below:

- (a) *General Liability Insurance:* The Contractor shall maintain policies of general liability insurance that at a minimum shall cover the following types of liability: bodily injury or death, personal injury, property damage, broad form property damage, and liability for the property of others in the care, custody and control of the Contractor. The policy shall provide for a combined single limit or the equivalent of not less than \$1,000,000 for each occurrence. If the Contractor is providing services at more than one site, the general liability insurance must cover each of those sites. If the general liability insurance coverage obtained by the Contractor is written on a "claims-made" basis, the certificate of insurance shall so indicate, and the policy shall contain an extended reporting period provision or similar "tail" provision such that the policy covers claims reported up to five (5) years beyond the date that this Contract is terminated.
- (b) *Automobile Insurance:* If the Contractor's services involve transporting any clients or goods for DHS/\_\_\_\_\_, the Contractor shall maintain a policy of automobile liability insurance covering property damage, personal injury protection, and liability for the vehicles used by the Contractor (including owned, hired and non-owned vehicles.) The policy shall provide for a combined single limit, or the equivalent, of not less than \$1,000,000. If the Contractor subcontracts with another entity or individual for transportation services, or services that include transportation services, the Contractor may satisfy this insurance requirement by submitting proof that the subcontractor has complied with the requirements of the "Insurance and Indemnification" section of this Contract. If the Contractor provides individual residential care services by contracting with individual residential care homes, not only must the Contractor maintain a policy of automobile liability insurance as indicated above, but each of the Contractor's individual residential care homes must also maintain a policy of automobile liability insurance. The policy of automobile liability insurance required of individual residential care homes must cover property damage, personal injury protection and liability with a combined single limit or the equivalent of not less than \$100,000 per person and \$300,000 for each accident/occurrence occurring during the course of their duties as an individual residential care home. **As used in this provision, the term "individual residential care" refers to twenty-four hour family-based care for one or more clients in foster/proctor care, a host home, or a professional parent setting.**
- (c) *Professional Liability Insurance:* If the Contractor employs doctors, dentists, social workers, mental health therapists or other professionals to provide services under this Contract, the Contractor shall maintain a policy of professional liability insurance with a limit of not less than one million dollars (\$1,000,000) per occurrence and aggregate. This professional liability insurance shall cover damages caused by errors, omissions or negligence related to the professional services provided under this Contract.
- (2) **Private Contractor—No Commercial Insurance Required, But Self-Insurance, Indemnification and Prior DHS Approval Required:** If the



Contractor claims that it is self-insured, the Contractor shall provide DHS with adequate evidence that the Contractor is financially solvent and has established financial arrangements (such as a written comprehensive self-insurance program, performance bonds or fidelity bonds) that will provide DHS with liability protection at least as adequate and extensive as the insurance otherwise required under this Contract for non-governmental entities. Specifically, the Contractor must show that its ability to process and pay claims adequately, fairly and in a timely manner is comparable to a commercial insurer that provides general-liability insurance, automobile insurance and professional liability insurance. Before executing this Contract, the Contractor shall obtain from the DHS Deputy Director for Support Services or the Deputy Director's designee a written statement indicating that DHS has determined, based on the Contractor's financial evidence and representations, that the Contractor's self-insurance arrangements and indemnification agreements are sufficient to satisfy the requirements of this Contract, and the Contractor is therefore not required to obtain additional commercial liability insurance naming DHS/\_\_\_\_\_ as an insured party. If it sees fit, DHS may include in this statement any additional conditions designed to ensure that the Contractor's self-insurance arrangements are comparable to the insurance required of other non-governmental contractors. A copy of the Deputy Director's or the designee's statement is attached to this Contract, and is a material provision of this Contract. Nothing in this provision shall be construed to require DHS to consent to any self-insurance arrangements, and DHS may withhold its approval for any reason whatsoever.

- (3) **Doctors, Dentists, Mental Health Therapists and Other Professionals:** If the Contractor is a doctor, dentist, social worker, mental health therapist or other professional who provides services directly to clients, the Contractor shall obtain from a commercial insurer and maintain at its sole expense a policy of general liability insurance and a policy of professional liability insurance ("malpractice insurance") during the term of this Contract. The policy shall provide for a limit of not less than \$1,000,000 per occurrence and aggregate.
- (4) **Governmental Contractors and the Utah Governmental Immunity Act:** If the Contractor is a governmental entity under the Utah Governmental Immunity Act (Title 63, Chapter 30 of the Utah Code), the parties agree that consistent with the terms of the Governmental Immunity Act, each party is responsible and liable for any wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Governmental Immunity Act.
- d. **All Contractors--Workers' Compensation:** The Contractor shall comply with the Utah Workers' Compensation Act (Title 34A, Chapter 2 of the Utah Code) which requires employers to provide workers' compensation coverage for their employees.
- e. **Indemnification.** Regardless of the type of insurance required by this section, the Contractor (and where applicable, the subcontractor) shall provide the following indemnification:

- (1) **Indemnification by Non-Governmental Contractor:** If the Contractor is not a governmental entity of the State of Utah, the Contractor shall defend, hold harmless and indemnify DHS/\_\_\_\_\_ and its employees and agents from and against all claims arising under this Contract as a result of the Contractor's acts or omissions to act. If a court determines that the conduct of DHS/\_\_\_\_\_ or its agents or employees is solely responsible for the claim in question, the Contractor shall have no obligation to indemnify DHS/\_\_\_\_\_, and DHS/\_\_\_\_\_ shall reimburse the Contractor for any reasonable attorney's fees and costs actually incurred by the Contractor in defending the action.
- (2) **Indemnification by Governmental Contractor:** If the Contractor is a governmental entity of the State of Utah, the Contractor and DHS/\_\_\_\_\_ shall defend, hold harmless and indemnify each other and their respective employees, agents, volunteers and invitees from and against all claims resulting from their negligent or wrongful conduct under this Contract, but in no event shall the indemnification obligation of either party exceed the amount set forth in Section 63-30-34 of the Utah Governmental Immunity Act or any similar statute in effect when a judgment is entered. Personal injury or property damage shall have the same meaning as defined in the Utah Governmental Immunity Act. This Contract shall not be construed with respect to third parties as a waiver of any governmental immunity to which a party to this Contract is otherwise entitled.
- (3) **Definition of the Term "Claim":** Regardless of the type of Contractor, the term "claim" in these "Indemnification" provisions includes any and all claims, losses, damages, liabilities, judgments, costs, expenses, attorneys' fees and causes of action of every kind or character (including personal injury, death, and damages to property or business interests) arising because of, out of, or in any way connected with the performance of this Contract or with a party's failure to comply with the provisions of this Contract.
- (4) **Defense of Suits Brought Upon Claims:** The Contractor shall defend all suits brought upon such claims and shall pay all incidental costs and expenses, but DHS/\_\_\_\_\_ shall have the option to participate in the defense of any such suit in which DHS/\_\_\_\_\_ perceives that its interests are not being protected by the Contractor. In such cases, the participation of DHS/\_\_\_\_\_ does not relieve the Contractor of any obligation under this Contract. However, if DHS/\_\_\_\_\_ elects to retain independent counsel, DHS/\_\_\_\_\_ shall pay the attorney's fees and costs associated with such counsel.
- (5) **No Subrogation or Contribution:** The Contractor understands that it has no right of subrogation or contribution from the State, DHS or DHS/\_\_\_\_\_ for any judgment rendered against the Contractor to the extent that such judgment results from the Contractor's own negligence or material failure to perform under the terms of this Contract.

- f. **Insurance Required of Subcontractors.** Subcontractors shall satisfy the insurance and indemnification requirements applicable to them. (See definition of "subcontractor" in Part I, Section E, Paragraph 1 of this Contract.) For example, if the Contractor is a governmental entity and the subcontractor is a private entity, the Contractor shall comply with the insurance and indemnification provisions applicable to governmental entities, and the subcontractor shall comply with the insurance and indemnification provisions applicable to non-governmental entities.
- g. **Certificate of Insurance, "Additional Insured" Endorsement and Evidence of Continued Coverage.** Before signing this Contract, a non-governmental contractor or subcontractor shall obtain from its insurer(s) and shall provide to DHS/\_\_\_\_\_ certificates of insurance and "additional insured" endorsements that indicate that the required coverage is in effect and that the insurer shall give DHS/\_\_\_\_\_ thirty (30) days notice of any modification, cancellation or nonrenewal of the policy. On an annual basis and upon request from DHS/\_\_\_\_\_, a non-governmental contractor or subcontractor shall provide DHS/\_\_\_\_\_ with evidence that the Contractor or subcontractor has the insurance coverage required by this Contract. Governmental entities are not required to provide certificates of insurance, "additional insured" endorsements or evidence of continued coverage.
3. **EMERGENCY MANAGEMENT AND BUSINESS CONTINUITY PLAN:** The Contractor shall use qualified personnel to perform all services in conformity with the requirements of this Contract and generally recognized standards. The Contractor represents that it has developed an emergency management and business continuity plan that allows the Contractor to continue to operate critical functions or processes during or following an emergency, and the Contractor acknowledges that DHS/\_\_\_\_\_ may rely upon this representation. The Contractor shall evaluate its emergency management and business continuity plan at least annually, and shall modify that plan as appropriate.

## **SECTION C: CONTRACTOR'S COMPLIANCE WITH APPLICABLE LAWS**

1. **COMPLIANCE WITH APPLICABLE LAWS.** The Contractor shall comply with all Applicable Laws. For purposes of convenience, the term "Applicable Laws" as used in this Section refers to all federal statutes and regulations, executive orders, state statutes and regulations, and DHS policies that apply to the Contractor's activities or that impose restrictions on the Contractor's use of federal or state funding or grants. To assist the Contractor in identifying and complying with the Applicable Laws, this Section C ("Contractor's Compliance with Applicable Laws") and Parts IV, V and VII of this Contract ("Contract Costs, Billing and Payment Information," "Cost Accounting Principles and Financial Reports," and "Summary of Some Commonly-Applicable Laws and Policies") include a listing and description of some commonly-applicable laws and policies. Contractor understands, however, that this Contract may not contain a complete list, that most business entities are subject to a wide variety of laws, and that it is the Contractor's responsibility to obtain appropriate advice about the scope and applicability of the laws and policies governing its activities.
2. **CERTIFICATION OF NON-DEBARMENT.** Pursuant to 45 C.F.R. 76.100 *et seq.* and Executive Orders 12549 and 12689, DHS may not award contracts to entities that are listed on

the government-wide debarment and suspension system. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any governmental entity. If the Contractor cannot so certify, the Contractor must attach a written explanation and DHS/\_\_\_\_\_ must obtain *prior* written approval for this Contract from the DHS Deputy Director for Support Services. Failure to obtain such prior written approval shall be considered a material breach of this Contract.

3. **DISCRIMINATION PROHIBITED:** The Contractor shall not discriminate against any person on the basis of race, color, sex, religion, ancestry, national origin, age, disability, or pregnancy or childbirth. The Contractor understands, for example, that the federal Office for Civil Rights has adopted policy guidelines that require DHS/\_\_\_\_\_ and the Contractor to ensure that DHS services are reasonably accessible to individuals with "limited English proficiency." (See <http://www.hhs.gov/ocr/generalinfo.html>). The guidelines specify when a Contractor must provide interpreter services for non-English speaking clients and they state that it is generally inappropriate to use the clients' relatives, especially minors, as interpreters. The Contractor shall also comply with the Utah Civil Rights Act (Sections 13-7-1 through 13-7-4 of the Utah Code), which prohibits discrimination by any business establishment, place of public accommodation, or enterprise regulated by the State of Utah.
4. **UNLAWFUL HARASSMENT PROHIBITED:** The Contractor shall comply with state and federal laws and regulations that prohibit unlawful harassment in the workplace, including the Utah Anti-Discrimination Act (Title 34A, Chapter 5 of the Utah Code) and Utah Executive Order dated March 17, 1993.
5. **DRUG-FREE WORKPLACE:** The Contractor shall maintain a drug-free workplace in accordance with federal and state statutes, regulations and policies, including guidelines and policies established by the State of Utah and DHS.
6. **HUMAN SUBJECTS RESEARCH:** The Contractor may not conduct any research involving human subjects, who are employees of DHS or individuals receiving services (whether direct or contracted) from DHS, or where DHS has provided funding for a project that includes research in the contract, unless the Contractor has obtained prior written approval from the DHS Institutional Review Board (IRB), and from any other federal or state agencies whose approval is required for research on human subjects. Before conducting any research on human subjects, the Contractor shall fully comply with any requirements or conditions, including requirements relating to informed consent, imposed by such IRB committees or agencies. DHS Policy Manual, Policy No. 01-10, explains the policies and procedures for obtaining approval from the DHS IRB.
7. **COMPLIANCE WITH LICENSING STANDARDS AND OTHER LAWS:** The Contractor represents that it currently meets all applicable licensing standards and other requirements of federal and state law, and all applicable ordinances of the city or county in which services or care is provided. The Contractor shall continue to comply with all such applicable standards, requirements and ordinances during the term of this Contract, and if the Contractor fails to do so, DHS/\_\_\_\_\_ may terminate this Contract immediately.

8. **COMPLIANCE WITH DHS' PROVIDER CODE OF CONDUCT:** Except as provided in subsection (d) of this Paragraph 8, the Contractor shall follow and enforce DHS' Provider Code of Conduct. The DHS Provider Code of Conduct may be found at the following web site: [http://www.dhs.utah.gov/pol\\_reports.htm](http://www.dhs.utah.gov/pol_reports.htm) (Select "Department & Policy Procedures"; then select "Section V -- Security/Risk Management/Liability"; then select 05-03 "Provider Code of Conduct.")
- a. Before allowing any employee or volunteer to work with clients under this Contract, the Contractor shall also comply with the following requirements:
    - (1) The Contractor shall provide a current copy of the Code of Conduct to each employee or volunteer currently working for the Contractor and to any new employees or volunteers; and
    - (2) The Contractor shall retain in each employee or volunteer's file a signed and dated statement in which that person certifies that he or she has read and understood the Code of Conduct and will comply with it.
  - b. As used in this Paragraph 8, "volunteer" means a person who:
    - (1) donates services to the Contractor without pay or other compensation, except for expenses incurred (such as for meals and travel costs); and
    - (2) is a board member, officer, or other person who is substantially involved in the Contractor's decision-making processes, or is a person who has direct unsupervised contact with DHS/\_\_\_\_\_ clients.
  - c. DHS/\_\_\_\_\_ shall annually provide the Contractor a copy of the current DHS Provider Code of Conduct poster. Contractor shall prominently display the poster where the employees and volunteers can see it.
  - d. If the Contractor is a Utah governmental entity, the Contractor may enforce its own written Code of Conduct in lieu of the DHS Provider Code of Conduct if the Contractor first provides DHS/\_\_\_\_\_ with a written certification that the Contractor has compared its own Code of Conduct and the DHS Provider Code of Conduct, and has determined that its own Code of Conduct is at least as comprehensive and stringent as the DHS Provider Code of Conduct. The governmental Contractor shall also give its employees and volunteers a copy of its Code of Conduct before they begin working with the clients under this Contract, and the governmental Contractor shall retain in each employee or volunteer's file a signed and dated statement in which that person certifies that he or she has read and understood the Contractor's Code of Conduct and will comply with it.
9. **RESTRICTIONS ON CONFLICTS OF INTEREST:**
- a. **Purpose.** The purpose of this Section is to assure that the goods and services provided to DHS/\_\_\_\_\_ under this Contract afford DHS/\_\_\_\_\_ a commercially reasonable level of quality and cost. These provisions prohibit Contractors and anyone

acting on their behalf from using their employment with the State of Utah or their relationship with others, including potential subcontractors, to enter into any transaction or arrangement that is improper or gives the appearance of being improper because of that person's State employment or relationship with a third party.

b. **Definitions**

- (1) **"Business Entity"** includes a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.
- (2) **"Conflict of Interest"** means any situation where the Contractor or any Representative of the Contractor has economic, social, political, familial, or other interests which interfere with, or have the potential to interfere with, the exercise of that person's duties, responsibilities, or judgment on behalf of the Contractor or DHS/\_\_\_\_\_, or which involve conflicting loyalties to the Contractor and to another interest. "Conflict of Interest" also includes any violation of the Ethics Acts, as explained in this Paragraph (9)(d) below.
- (3) **"Contractor"** means the entity contracting with DHS/\_\_\_\_\_ and includes all Representatives of that entity as defined in Paragraph (9)(b)(4) below. If the Contractor subcontracts any of its duties under this Contract, the term "Contractor" also refers to the subcontractor and its Representatives. (See definition of "Subcontractor" in Part I, Section E, Paragraph 1 of this Contract.)
- (4) **"Contractor's Representative"** means any person or entity acting on behalf of the Contractor, and includes all employees, owners, partners, directors, officers, board members, and agents of the Contractor, as well as any other individual or group of individuals with authority to establish policies or make decisions for the Contractor. "Volunteers," as defined in Paragraph (9)(b)(8) below, are not "Representatives" and are not required to be included in the Contractor's Disclosure Statement, unless they are board members or officers, or are substantially involved in the Contractor's decision-making processes, or unless they have direct, unsupervised contact with DHS/\_\_\_\_\_ clients.
- (5) **"Disclosure Statement"** means a written statement provided by the Contractor to DHS/\_\_\_\_\_ about the Contractor's Conflicts of Interest, including the information listed in Paragraph (9)(f)(2) below. A form entitled "Conflict of Interest – Disclosure Statement" is available from DHS/\_\_\_\_\_, and may be obtained through a DHS/\_\_\_\_\_ Contract Representative or through the DHS Bureau of Contract Management web site:  
[http://www.hsofo.utah.gov/contracts\\_forms.htm](http://www.hsofo.utah.gov/contracts_forms.htm)
- (6) **"Related Party"** means:
  - (a) any person related to the Contractor by blood or marriage, which, for purposes of this Contract, includes parents, spouses, children, siblings,

grandparents, grandchildren, uncles, aunts, nephews, nieces, first cousins, and in-laws; and

- (b) all business associates of the Contractor who:
  - (i) are partners, directors, or officers in the same business entity as the Contractor;
  - (ii) have authority to make decisions or establish policies in the same business entity as the Contractor; or
  - (iii) directly or indirectly own 10% or more in the same business entity as the Contractor.
- (7) **“Related-Party Transaction”** means payments made by the Contractor to a Related Party in any manner or description (including those relating to administrative costs, capital expenditures, program expenditures, and payments for goods, services, facilities, leases, salaries, wages, professional fees or similar expenses) in connection with this Contract. “Related-Party Transaction” also means arrangements made between the Contractor and a Related Party, whether or not payments are involved, which affect the performance of this Contract in any manner.
- (8) **“Volunteer”** means a person who donates services to the Contractor without pay or other compensation, except for expenses incurred (such as for meals and travel costs.)

c. **Restrictions on Conflicts of Interest.** Transactions involving Conflicts of Interest are prohibited to the extent that they are in any way the result of undue influence. Conflicts of Interest can occur in one of three ways:

- (1) **Dual Employment.** Conflicts of Interest involving Dual Employment can occur when a Contractor’s Representative is also employed by the State of Utah. Any use of a person’s employment with the State of Utah to influence DHS/\_\_\_\_\_’s decision to enter into this Contract with the Contractor or to influence any transactions undertaken by the Contractor pursuant to this Contract with DHS/\_\_\_\_\_ is a prohibited Conflict of Interest. See also Paragraph (9)(d) for statutory requirements relating to Dual Employment.
- (2) **Related-Party Transactions.** Conflicts of Interest involving Related-Party Transactions occur when the Contractor makes payments to a Related Party in any manner or description using money obtained from DHS/\_\_\_\_\_ through this Contract. Conflicts of Interest can also occur when arrangements are made between the Contractor and a Related Party, whether or not payments are involved, which affect the performance of this Contract in any manner. Any use of a person’s status as a Related Party to influence DHS/\_\_\_\_\_’s decision to enter into this Contract with the Contractor or to influence any transactions

undertaken by the Contractor pursuant to this Contract with DHS/\_\_\_\_\_ is a prohibited Conflict of Interest.

- (3) **Independent Judgment Impaired.** Conflicts of Interest involving impaired judgment occur when the Contractor's Representative participates in any transaction on the Contractor's behalf and has a relationship or shared interest with another party to the transaction, and this relationship or shared interest is not covered by the Related-Party Transaction restrictions in Paragraph (9)(c)(2) above, but could affect the Representative's ability or willingness to exercise independent judgment for the benefit of the Contractor. Any use of a person's relationship or shared interest to influence DHS/\_\_\_\_\_'s decision to enter into this Contract with the Contractor or to influence any transactions undertaken by the Contractor pursuant to this Contract with DHS/\_\_\_\_\_ is a prohibited Conflict of Interest.

- d. **Dual Employment and Contractor's Compliance with the Ethics Acts.** While dual employment is not prohibited, the Contractor shall take measures to ensure that the Contractor's Representatives do not use their dual employment to unduly influence either DHS/\_\_\_\_\_'s decision to enter into this Contract or any transactions undertaken by the Contractor in furtherance of this Contract.

The Contractor shall comply at all times with the applicable provisions of the Utah Public Officers' and Employees' Ethics Act (Title 67, Chapter 16 of the Utah Code) and the Municipal Officers' and Employees' Ethics Act (Title 10, Chapter 3, Part 13 of the Utah Code) (referred to collectively as the "Ethics Acts.") The Ethics Acts prohibit public officers and public employees from having personal involvement in any Business Entity if that involvement creates a substantial conflict between their private interests and their public duties. The parties agree, however, that except as otherwise expressly provided in the "Related-Party Transaction" and "Independent Judgment Impaired" provisions of this Contract, nothing in this Contract is intended to expand or modify the Contractor's obligations under the Ethics Acts.

- e. **Restrictions on Conflicts of Interest Involving Related-Party Transactions or Where Independent Judgment Is Impaired.** Prior written approval from DHS/\_\_\_\_\_ is required before the Contractor enters into any Related-Party Transaction in connection with this Contract. Prior written approval from DHS/\_\_\_\_\_ is also required before the Contractor enters into any transaction if a Contractor's Representative has any relationship with another party to the transaction which has the potential to impair the Contractor's Representative's independent judgment. Any transactions involving related-parties, or involving any other relationship that could impair the independent judgment of the Contractor, and which have the potential to result in increased costs, decreased performance, the appearance of impropriety, or any other disadvantage to DHS/\_\_\_\_\_, are prohibited.

- f. **Disclosing Conflicts of Interest to DHS:**

- (1) **Self-Disclosure and Contractor Review.** The Contractor shall familiarize Contractor's Representatives with:



- (a) the Conflict of Interest concept and the disclosure requirements of this Contract; and
- (b) the applicable provisions of the Ethics Acts.

The Contractor shall implement a written policy that requires the Contractor's Representatives to disclose to the Contractor all existing, potential, and contemplated Conflicts of Interest. The Contractor shall also regularly review any disclosures and its own operations to reasonably assure DHS/\_\_\_\_\_ that the Contractor avoids prohibited Conflicts of Interest.

- (2) **Contractor's Disclosure Statement.** Before signing this Contract, the Contractor shall submit a Disclosure Statement to DHS/\_\_\_\_\_ in which the Contractor discloses any existing or potential Conflicts of Interest, including all information required by the Ethics Acts and this Contract. In particular, the Contractor's Disclosure Statement shall include:

- (a) **For Conflicts of Interest involving Dual Employment** (as explained in Paragraph (9)(c)(1) above) the following information is required:
  - (i) whether any of the Contractor's Representatives are employed both by the Contractor and by the State of Utah;
  - (ii) the name of the Contractor's Representative having that Dual Employment;
  - (iii) the title or position of the Contractor's Representative with the Contractor and with the State of Utah;
  - (iv) the nature and value of the Contractor's Representative's interest in the Contractor's Business Entity;
  - (v) the Contractor's Representative's decision-making authority with the Contractor and with the State of Utah and how that individual's authority affects this Contract; and
  - (vi) measures taken by the Contractor to protect DHS/\_\_\_\_\_ from potentially adverse effects resulting from the Contractor's Representative's Dual Employment.
- (b) **For Conflicts of Interest involving Related-Party Transactions** (as defined in Paragraphs (9)(b)(6) and (7) above, and as explained in Paragraph (9)(c)(2) above) **or involving impaired judgment** (as explained in Paragraph (9)(c)(3) above), the following information is required:
  - (i) the name of the Contractor's Representative having the Conflict of Interest;
  - (ii) the name of the other party to the Conflict of Interest;
  - (iii) the relationship between the individuals identified in (i) and (ii) above;

- (iv) a description of the transaction to which the Conflict of Interest applies and the dollar amount involved (if any);
- (v) the decision-making authority of the Contractor's Representative and the party identified in (ii) above, with respect to the applicable transaction;
- (vi) the potential effect of the Conflict of Interest on this Contract; and
- (vii) the measures taken by the Contractor to protect DHS/\_\_\_\_\_ from potentially adverse effects resulting from the identified parties' relationship.

If the Contractor has no Conflicts of Interest or has no Representatives who are also employees of the State of Utah, the Contractor shall so indicate on the Disclosure Statement. By submitting a Disclosure Statement, the Contractor is certifying to DHS/\_\_\_\_\_ that it has implemented the safeguards required by Paragraph (9)(f)(1) above, and that it has checked its organization and the Contractor's Representatives for Conflicts of Interest.

- (3) **Contractor's Continuing Duty to Disclose Conflicts of Interest.** The Contractor has a continuing duty to immediately send DHS/\_\_\_\_\_ an updated Disclosure Statement if, at any time during the term of the Contract, the Contractor contemplates any transaction involving a Conflict of Interest, or hires or affiliates with any individual with a potential Conflict of Interest, or discovers any existing Conflict of Interest. Additionally, for contracts in excess of one year, the Contractor shall submit an updated Disclosure Statement by July 1 of each year, containing the same information required in the initial Disclosure Statement described in Paragraph (9)(f)(2) above.
- (4) **Disclosure for Political Subdivisions and Agencies.** If the Contractor is a political subdivision, agency or municipality of the State of Utah, the Contractor may submit to DHS/\_\_\_\_\_, a written certification in lieu of the Disclosure Statement, in which the Contractor certifies that it maintains a written policy requiring the Contractor's Representatives to disclose their Conflicts of Interest, and that this policy provides the Contractor with the information it needs to satisfy the provisions of this Contract. The certification shall also provide that the Contractor monitors for compliance with these Conflict of Interest provisions and can reasonably assure DHS/\_\_\_\_\_ that any of the Contractor's Representatives with a potential Conflict of Interest do not:
  - (a) make or influence decisions or set policies that affect this Contract;
  - (b) monitor the performance of this Contract; or
  - (c) become involved in or otherwise benefit from the performance of this Contract.

A form entitled "Conflict of Interest Certification" is available from

DHS/\_\_\_\_\_, and may be obtained through a DHS/\_\_\_\_\_ Contract Representative or through the DHS Bureau of Contract Management web site: [http://www.hsofo.utah.gov/contracts\\_forms.htm](http://www.hsofo.utah.gov/contracts_forms.htm)

g. **DHS' Response to Disclosure Statements.**

(1) **Initial Approval, Disapproval or Remedial Action Requirement.**

DHS/\_\_\_\_\_ shall submit a written response to the Contractor within fourteen days after receiving the Contractor's Disclosure Statement. The response shall acknowledge receipt of the Disclosure Statement, and shall advise the Contractor that either:

- (a) DHS/\_\_\_\_\_ does not require any additional information or remedial action before executing this Contract;
- (b) DHS/\_\_\_\_\_ requires additional information or disclosures or requires the Contractor to undertake specific remedial action before executing or continuing this Contract; or
- (c) DHS/\_\_\_\_\_ disapproves certain identified transactions due to one or more prohibited Conflicts of Interest and unless the Contractor discontinues those transactions, DHS/\_\_\_\_\_ will declare this Contract breached and terminated.

(2) **DHS' Right to Continue Its Investigation and Revise Its Response.** If DHS/\_\_\_\_\_ fails to respond to the Contractor within fourteen days of receiving the Contractor's Disclosure Statement, the Contractor may proceed as if no additional information or remedial action were required. The parties expressly agree, however, that regardless of any action taken pursuant to the response provisions contained in Paragraph (9)(g)(1) above, DHS/\_\_\_\_\_ retains the right to do any of the following if, at any time during the term of this Contract, DHS/\_\_\_\_\_ determines that a Conflict of Interest problem exists:

- (a) continue to investigate any potential Conflict of Interest;
- (b) require further information from the Contractor;
- (c) require specific remedial action; or
- (d) disapprove identified transactions.

h. **Monitoring the Contractor's Compliance with the Conflict of Interest Provisions of this Contract.** DHS/\_\_\_\_\_ reserves the right to investigate and audit the Contractor's records and transactions at any time to determine if the Contractor has complied with the restrictions on Conflicts of Interest, and to determine if the Contractor took appropriate measures to assure that the goods or services provided under this Contract afford DHS/\_\_\_\_\_ a satisfactory level of quality and cost. Appropriate measures taken by the Contractor to avoid improper Conflicts of Interest

might include, for example, competitive bidding for the goods or services purchased by the Contractor, or a requirement that billings include supporting documentation showing that costs were necessary, reasonable and actually incurred.

- i. **Remedies for Contractor's Non-Compliance with the Conflict of Interest Provisions of This Contract.** The parties expressly acknowledge that if DHS/\_\_\_\_\_ reasonably determines that the Contractor has failed to comply with the Conflict of Interest provisions of this Contract and has entered into any prohibited transaction or arrangement that is disadvantageous to DHS/\_\_\_\_\_, DHS/\_\_\_\_\_ shall have the option to rescind or void this Contract and any related subcontracts without paying for services provided and without returning any consideration received. DHS/\_\_\_\_\_ shall also have the option to disallow the Contractor's expenditures and to adjust its payments to the Contractor by deducting such disallowed expenditures or by requiring the Contractor to immediately refund any payments previously made, as provided in Part IV, Paragraphs 10 and 11 of this Contract ("Overpayments, Audit Exceptions and Disallowances" and "Payment Withholding.") If DHS/\_\_\_\_\_ requests a refund from the Contractor, the Contractor shall refund the payment within ten (10) days of receiving notice of such overpayment, and shall pay DHS/\_\_\_\_\_ interest at the rate of eight percent (8%) a year, beginning on the eleventh day after the Contractor receives such notice.

## **SECTION D: COMPLIANCE MONITORING AND RECORD KEEPING RESPONSIBILITIES**

1. **MONITORING OF CONTRACTOR'S PERFORMANCE:** DHS and DHS/\_\_\_\_\_ shall have the right to monitor the Contractor's performance regarding all services purchased under this Contract. Monitoring of Contractor's performance shall be at the complete discretion of DHS and DHS/\_\_\_\_\_, who will rely on the criteria set forth in this Contract, including the goals, service objectives and methods described in Parts II and III ("Scope of Work and Special Conditions" and "Performance Measures and Client Outcomes") and the Contractor's fiscal operations described in Parts IV through VI ("Contract Costs, Billing and Payment Information," "Cost Accounting Principles and Financial Reports," and "Budgeting Principles and Forms.") Performance monitoring may include both announced and unannounced visits.
2. **REVIEW OF CONTRACTOR'S REPORTS AND BILLS:** All billings and reports submitted by the Contractor will be reviewed by DHS/\_\_\_\_\_ at DHS/\_\_\_\_\_'s discretion. DHS/\_\_\_\_\_ may direct any inquiries regarding Contractor's billings and reports to the Contractor's Representative as follows:

Title: \_\_\_\_\_ Name (Optional): \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Address: \_\_\_\_\_

3. **CONSULTATION/TECHNICAL ASSISTANCE:** Upon request or as otherwise determined by DHS/\_\_\_\_\_ to be appropriate, DHS/\_\_\_\_\_ may supply the Contractor with consultation and technical assistance to help the Contractor improve its performance under this

Contract. The Contractor acknowledges, however, that DHS/\_\_\_\_\_ is not obligated to provide any particular consultation or technical assistance.

4. **TRAINING FOR CONTRACTOR'S STAFF:** Contractor shall conduct all necessary training to ensure that its staff carries out its responsibilities under this Contract and that the staff is familiar with the requirements imposed by this Contract and applicable laws.
5. **RECORD-KEEPING AND REPORTING REQUIREMENTS:** The Contractor shall comply with all record-keeping and reporting requirements of this Contract, including the requirements set out in the attachments to this Contract. In addition, the Contractor shall maintain or shall supervise the maintenance of all records necessary for the proper and efficient operation of the programs covered by this Contract, including records relating to applications, determination of clients' eligibility (if applicable), the provision of services and administrative costs, and any other records, such as statistical and fiscal records, necessary for complying with the reporting and accountability requirements of this Contract.
6. **RETENTION OF RECORDS RELATED TO THIS CONTRACT:** The Contractor shall retain all records related to this Contract for the following periods of time:
  - a. **Administrative Records and Records Relating to Adult Clients:** The Contractor shall retain all administrative records relating to this Contract and all adult client records (including records that support Title XIX reimbursements) for at least six (6) years after DHS/\_\_\_\_\_ makes the last payment on this Contract, or six (6) years after the completion of any audits initiated within this six-year period, whichever period is longer.
  - b. **Records Relating to Clients Who Are Minors:** The Contractor shall retain all records relating to clients under 18 years old (including records that support Title XIX reimbursements) for at least six (6) years after DHS/\_\_\_\_\_ makes the last payment on this Contract, or six (6) years after the completion of any audits initiated within this six-year period, or until the child client reaches the age of twenty-two (22), whichever period is longest.
  - c. **DHS' Non-Exclusive Ownership to Patient Records:** The Contractor acknowledges that DHS/\_\_\_\_\_ has a non-exclusive ownership interest in the records relating to this Contract, and the Contractor shall not destroy or relocate any records relating to this Contract or the services provided under this Contract for the six-year period defined in subsections (a) and (b) of this Paragraph ("Retention of Records Related to This Contract"), unless the Contractor gives DHS/\_\_\_\_\_ thirty days' written notice and obtains DHS/\_\_\_\_\_ 's prior written consent to the proposed destruction or relocation of the records. (As used in this Paragraph, the term "relocate" means to move the records to a site which is not either the site where the Contractor provides the services under this Contract or a site operated by the Contractor in the geographic area covered by this Contract. The term "non-exclusive ownership interest in the records" indicates that entities other than DHS/\_\_\_\_\_ may also have an ownership interest in the records, especially if those entities provided part of the funding for the programs or services covered by this Contract.)

- (1) **Permission for Early Destruction of Records:** If the Contractor requests permission for the early destruction or relocation of the records, DHS/\_\_\_\_\_ may require the Contractor to deliver the original records to DHS/\_\_\_\_\_ or provide DHS/\_\_\_\_\_ with photocopies of the records, and the Contractor shall pay for the delivery costs or photocopying.
- (2) **Alcohol and Drug Abuse Patient Records - Discontinued Operations:** The Contractor is bound by the requirements of 42 C.F.R. Part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records") if the Contractor provides alcohol or drug abuse diagnosis, treatment or referral services under this Contract and obtains information for the purpose of providing such services. In addition, if the Contractor discontinues its alcohol or drug abuse program or ceases to provide its services under this Contract, the Contractor shall comply with the following requirements before destroying the records of any patients served under this Contract:
  - (a) the Contractor shall notify DHS/\_\_\_\_\_ in writing at least 30 days before it discontinues its operations or ceases to provide its services;
  - (b) upon request from DHS/\_\_\_\_\_, the Contractor shall give each of its alcohol and drug abuse patients a consent form which meets the requirements of 42 C.F.R. § 2.31, and which authorizes the Contractor to transfer its patient records to DHS/\_\_\_\_\_; and
  - (c) upon obtaining signed consent forms from patients, the Contractor shall deliver the consenting patients' records to DHS/\_\_\_\_\_.
- (3) **Method for Destruction of Patient Records:** If the Contractor maintains any client records under this Contract, and if this Contract or the DHS retention schedule indicates that such client records are to be destroyed after a certain period of time, the Contractor shall shred or burn the records to protect client confidentiality.

7. **PROTECTING THE CONFIDENTIALITY OF CLIENT RECORDS:** If the Contractor maintains any client records in connection with the services provided under this Contract, the Contractor shall comply with this Paragraph. The Contractor acknowledges that client records are generally considered confidential and that depending upon the content of such records, public access may be restricted under state and federal laws, including the Public Health Service Act (which classifies alcohol abuse, substance abuse and mental health patient records in federally assisted programs as confidential; *See* 42 U.S.C. § 290dd-2, 42 C.F.R. § 2.1 *et seq.*, and other similar provisions), the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (which establishes standards to protect the privacy of health information maintained by health plans, health care clearinghouses and health care providers who transmit health information in electronic form; *See* Public L. 104-191 (1996), and 45 CFR Parts 160, 162, and 164); and the Utah Government Records Access and Management Act ("GRAMA": Title 63, Chapter 2 of the Utah Code.) To preserve the integrity and confidentiality of client records, the Contractor shall maintain all client records in locked rooms or cases. Except with the express written consent of the client, the Contractor shall not use any client information for purposes

not directly connected with the responsibilities or services under this Contract, and the Contractor may disclose client information only as provided by this Contract, as authorized by the client in writing, or as required by law. The Contractor's staff shall have access only to those portions of the records directly related to their work assignments.

8. **GENERAL ACCESS TO THE CONTRACTOR'S RECORDS:** The Contractor shall provide DHS/\_\_\_\_\_ with ready access to any records produced or received by the Contractor in connection with the services or programs provided under this Contract, unless such access is expressly prohibited by law. The Contractor acknowledges that some of its records, including this Contract, may be available to the public and to the Contractor's clients pursuant to GRAMA and other state and federal laws, including the federal "Protection and Advocacy for Individuals with Mental Illness Act," 42 U.S.C. §§ 10801 *et seq.* Therefore, upon receiving a request for records or information from any individual or entity other than DHS/\_\_\_\_\_, the Contractor shall immediately notify DHS/\_\_\_\_\_ about the request. However, if the Contractor receives a written request from the client or from a person or entity (such as a client's insurance provider) authorized by the client in writing to have access to the client's records, the Contractor may release the requested records without first notifying DHS/\_\_\_\_\_ if such release is consistent with the record classification, governing law and ethical practices. If the Contractor is not a governmental entity or if the Contractor is a governmental entity that lacks expertise in responding to GRAMA requests, the Contractor shall also consult with DHS/\_\_\_\_\_ to determine the appropriate response under this Contract and federal and state laws, including GRAMA. If the requested records come within the scope of GRAMA and if DHS/\_\_\_\_\_ so requests, the Contractor shall deliver copies of the requested records to DHS/\_\_\_\_\_, and allow DHS/\_\_\_\_\_ to respond directly to the records-request.
9. **AUDITORS' AND MONITORS' ACCESS TO THE CONTRACTOR'S RECORDS:** Upon request, the Contractor shall allow independent, state and federal auditors or contract reviewers to have access to any records related to this Contract, including all financial records (such as accounting records and supporting documentation) for audit review and inspection. (*See, e.g., 42 C.F.R. § 2.53, "Confidentiality of Alcohol and Drug Abuse Patient Records,"* which allows inspection of records for auditing and contract performance purposes.) In addition, the Contractor shall comply with all records-access provisions set forth in Parts IV, V and VII of this Contract ("Contract Costs, Billing and Payment Information," "Cost Accounting Principles and Financial Reports," and "Summary of Some Commonly-Applicable Laws and Policies.")
10. **NOTIFICATION OF THE INTERNAL REVENUE SERVICE:** The Contractor understands that it is DHS policy to notify the Internal Revenue Service if DHS suspects that a contractor has violated IRS regulations or statutes.

## **SECTION E: CONTRACT MODIFICATIONS AND DISPUTE RESOLUTION PROCEDURES**

1. **SUBCONTRACTS:**
  - a. **Definition of "Subcontractor":** As used in this Contract, the term "subcontractor" means an individual or entity that has entered into an agreement with the original

Contractor to perform the services or provide the goods for which that original Contractor is responsible under the terms of this Contract. Notwithstanding the foregoing, the term "subcontractor" also refers to individuals or entities that have entered into agreements with any subcontractor if: (1) those individuals or entities have agreed to perform all or most of the subcontractor's duties under this Contract; or (2) federal law requires this Contract to apply to such individuals or entities.

b. **When Subcontracting Is Allowed:**

*(Please check ONE of the three options):*

- ☐ The Contractor may not subcontract to provide the services specified in this Contract.
- ☐ The Contractor may subcontract to provide the services specified in the contract. However, Contractor must notify DHS/\_\_\_\_\_ in writing of plans to enter into any subcontracts and must obtain DHS/\_\_\_\_\_ approval prior to entering into any subcontracts.
- ☐ The Contractor is a subrecipient as defined in Part I, Section A, Paragraph 3. As a subrecipient, the Contractor may enter into subcontracts with other individuals or entities to provide the services required by this Contract and other state and federal laws.

c. **When Subcontracting Is Allowed:** If Contractor is allowed to subcontract under paragraph 1.b. above, the following provisions apply:

- (1) **Duties of Subcontractors:** Regardless of whether a particular provision in this Contract mentions subcontractors, a subcontractor must comply with all provisions of this Contract, including the state procurement requirements, insurance requirements and the fiscal and program requirements. The Contractor retains full responsibility for contract compliance, whether the services are provided directly or by a subcontractor.
- (2) **Provisions Required in Subcontracts:** If the Contractor enters into any subcontracts with other individuals or entities pursuant to subsection (b) above, and pays those individuals or entities for such goods or services through federal and state funds, the Contractor shall include provisions in its subcontracts regarding the federal and state laws identified in this Contract (Part I, Section C, "Contractor's Compliance with Applicable Laws ;" Part IV, "Contract Costs, Billing and Payment Information;" Part V, "Cost Accounting Principles and Financial Reports;" and Part VII, "Summary of Some Commonly-Applicable Laws and Policies;"), as well as other laws and contract provisions identified in 45 C.F.R. § 92.36(i), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."



2. **CONTRACT ASSIGNMENT:** The Contractor may not assign its benefits and obligations under this Contract to any other entity, without the prior consent of DHS/\_\_\_\_\_, which may be withheld for any reason.
3. **CONTRACT RENEGOTIATIONS OR MODIFICATIONS:** The parties may amend, modify or supplement this Contract only by a written amendment signed by the parties and approved by the DHS Bureau of Contract Management. The amendment shall be attached to the original signed copy of this Contract. DHS/\_\_\_\_\_ shall not pay for any services provided by the Contractor unless such payments are specifically authorized by this Contract or an approved written amendment to this Contract.
4. **CONTRACT TERMINATION:**
  - a. **Right to Terminate Upon Thirty Days Notice.** Either party may terminate this Contract, with or without cause, in advance of the Contract's expiration date by giving the other party thirty (30) days written notice.
  - b. **Immediate Termination.** In addition, if the Contractor's violation of this Contract creates or is likely to create a risk of harm to the clients served under this Contract, or if any other provision of this Contract (including any provision in the attachments) allows DHS/\_\_\_\_\_ to terminate the Contract immediately for a violation of that provision, DHS/\_\_\_\_\_ may terminate this Contract immediately by notifying the Contractor in writing.
  - c. **Cooperative Efforts to Protect the Clients.** If either party elects to terminate this Contract, both parties will use their best efforts to provide for uninterrupted client services.
  - d. **Processing Payments and Records Access After Termination.** Upon termination of the Contract, the parties shall use the financial and accounting arrangements set forth in this Contract to process the accounts and payments for any services that the Contractor rendered before the termination. In addition, the Contractor shall comply with the provisions of this Contract relating to the Contractor's record-keeping responsibilities, and shall ensure that the Contractor's staff properly maintains all records (including financial records and any client treatment records.)
  - e. **Attorneys' Fees and Costs.** If either party seeks to enforce this Contract upon a breach by the other party, or if one party seeks to defend itself against liability arising from the negligence of the other party, the prevailing party shall receive from the unsuccessful party all court costs and its reasonable attorneys' fees, regardless of whether such fees are incurred in connection with litigation.
  - f. **Remedies for Contractor's Violation.** The Contractor acknowledges that if the Contractor violates the terms of this Contract, DHS/\_\_\_\_\_ is entitled to avail itself of all available legal, equitable and statutory remedies, including money damages, injunctive relief and debarment as allowed by state and federal law.

5. **GRIEVANCE PROCEDURES FOR CLIENTS AND APPLICANTS:** The Contractor shall establish a grievance system for the clients and applicants of the programs covered by this Contract, and shall notify each client and applicant in writing that:
- a. Clients and applicants have the right to present the Contractor with their grievances about:
    - (1) denial of services covered by this Contract;
    - (2) exclusion from a program covered by this Contract; or
    - (3) inadequacies or inequities in the programs and services provided under this Contract; and
  - b. If the Contractor denies a grievance request about the services provided under this Contract or fails to respond to a grievance in a timely fashion, the client or applicant may contact, in writing, DHS/\_\_\_\_\_ 's Representative listed on the front page of this contract. The Representative will attempt to resolve the grievance. If the client or applicant is dissatisfied with the Representative's response, the client or applicant may file a written appeal to the Director of DHS/\_\_\_\_\_, and the Director shall respond to the appeal in writing within 30 working days. If the applicant or client is dissatisfied with the Director's decision, the client or applicant may request a hearing before the DHS Office of Administrative Hearings ("OAH"). This hearing request must be filed with OAH within ten (10) working days of receiving the DHS/\_\_\_\_\_ Director's written decision. If OAH finds that the client or applicant's request is supported by applicable law, OAH may order the Contractor or DHS to remedy the problem addressed in the grievance.
6. **CONTRACT DISPUTES - COMPLAINT AND APPEAL PROCESS:** If the Contractor wishes to challenge any procurement issues related to this Contract, such challenges are governed by the Utah Procurement Act, Utah Code Ann. § 63-56-1 *et seq.*

The Contractor may appeal from any *non*-procurement contract disputes with DHS/\_\_\_\_\_ by filing a written appeal with the DHS Deputy Director for Support Services within thirty (30) days of the disputed DHS/\_\_\_\_\_ action or decision. The Contractor's written appeal shall identify the Contractor, the contract number, the disputed issue, pertinent contract provisions or legal authorities, and the contact person for the Contractor. The Contractor shall also provide a copy of the written appeal to the Director of DHS/\_\_\_\_\_.

The DHS Deputy Director shall have ten (10) working days to issue DHS' written response to the Contractor's appeal. The Deputy Director may designate another DHS employee to review and respond to the Contractor's appeal. If the Contractor is not satisfied with the response of the Deputy Director, the Contractor may pursue those remedies available to it in a court of appropriate jurisdiction, subject to the rules and regulations applicable therein.

## PART II: SCOPE OF WORK AND SPECIAL CONDITIONS

### **DESCRIPTION OF THE SERVICES OR SUPPORTS TO BE PROVIDED UNDER THIS CONTRACT.**

*In completing this part of the Contract, state in detail the resources the Contractor must have and what the Contractor must do (performance criteria) to successfully provide or complete the services or supports required by this Contract. When the Contract is the result of a Request for Proposal ("RFP"), the performance criteria identified must be consistent with the criteria in the RFP and/or any amendments to the RFP. When applicable, the performance criteria must also be consistent with the criteria used by DHS in setting the rate of payment for the type(s) of service to be provided by the Contractor. The description of the performance criteria the Contractor must meet must be detailed enough to allow DHS/\_\_\_\_\_ or DHS to effectively monitor the Contractor's performance.*

*Is this service or support a **Residential Program**?*

*Select ONE of the following:*

☐ *Yes?*

*If yes is marked above, the Description of the Services or Supports must state whether or not the Contractor may receive payment for client absences. If the Contractor may receive payment for client absences, the conditions under which such payments will be made must be clearly outlined (e.g. required documentation, limit on number of absences, written approvals)*

☐ *No?*

*(For more detailed instructions on how to complete this part of the contract, please refer to the **Monitoring Handbook for Performance Based Contracts.**)*

## PART III: PERFORMANCE MEASURES AND CLIENT OUTCOMES

The Contractor shall comply with the following objective based performance requirements:

**Instructions:** This Contract must include specific objectives (goals) for both the Contractor's service, support, or project, and, when applicable, the individual clients the Contractor serves. DHS/\_\_\_\_\_ may work with the Contractor in developing these objectives. The objectives included in the contract must be based upon observable and measurable behavior that is time-limited and has clear criteria for success.

1. **Program Performance Objectives.** *The first step in developing program performance objectives is to identify program performance measures. Program performance measures answer the question: "How well is the agency or program service delivery working?" These measures focus on the intended performance of the Contractor and indicate the extent to which the Contractor is meeting its short and long-term goals. Although program performance measures encompass contract compliance, their scope is much broader than compliance alone. Their purpose is to assess both program implementation and program impact in order to improve program planning and monitor program development. Program performance measures might include topics such as "protecting the community" or "family preservation".*

*Once appropriate program performance measures have been identified, specific program performance objectives designed to define and quantify the identified measures can be developed. For example, a program performance objective related to a measure of protecting the community might be "5% fewer clients will go AWOL in the current year than in the previous year." AWOLs is one way to define what "protecting the community" means. AWOLs are also measurable so long as appropriate data is maintained and this fact allows one to assess progress toward the stated objective.,*

*(For more detailed instructions on how to complete this part of the contract, please refer to the Monitoring Handbook for Performance Based Contracts.)*

2. **Client Outcomes.** *Is this a contract for a treatment program that requires the development of client treatment plans?*

☐ *Yes. If this box is checked the Contract **must** include the following standard language:*

A treatment plan is required for all clients and must include individualized treatment objectives that address the assessed needs of the client. The treatment plan must prescribe an integrated program of therapies, activities, and experiences to meet the client's treatment objectives. The plan must also include reasonable measures to evaluate whether the client's individualized treatment objectives are met.

☐ *No. If this box is checked, **no** client-centered objectives are required of the Contractor.*

3. **Customer or Client Satisfaction Surveys:** The Contractor understands that DHS is committed to providing client-oriented services, and that DHS and DHS/\_\_\_\_\_ often conduct client-satisfaction surveys to ensure that services are appropriate for the clients served. Contractor therefore agrees to cooperate with all DHS and DHS/\_\_\_\_\_ initiated client or customer feedback activities.

## PART IV: CONTRACT COSTS, BILLING AND PAYMENT INFORMATION

### 1. CONTRACTOR'S SPECIFICS:

- a. Billing name and address of the Contractor:

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- b. IRS number: 

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- c. Telephone number: 

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- d. Address/location where the services will be provided:

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- e. Name and address of the entity or individual preparing Contractor's audit report or financial statement:

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### 2. PAYMENT RATES:

- a. **Rates.** The rates for this Contract are specified in the following table:

Service Title (use DHS title that describes the type of service)	Service Code	Unit of Service	Rate (\$)	No. of Service Units	Total Contract Amount (\$)

b. **Basis for Rates:**

*(Check only ONE of these two options):*

- ☐ **Unit of Service (Rate-Based) Contracts.** DHS/\_\_\_\_\_ shall pay the Contractor at the rates established by DHS for such services, or at the rate negotiated by the parties, if that rate is lower than the standard rates established by DHS. The DHS Service Rate Manual defines the DHS rates.
- ☐ **Cost-Reimbursement Contracts.** In a “cost-reimbursement contract,” DHS/\_\_\_\_\_'s payment to the Contractor is based on supporting documentation from the Contractor showing that the service costs were necessary, reasonable and actually incurred by the Contractor in providing the services required by this Contract. The initial payment rates for cost-reimbursement contracts shall be negotiated between DHS/\_\_\_\_\_ and the Contractor, and may be calculated based on actual expenditures for prior period, available budget and changes in the type or quality of service. DHS/\_\_\_\_\_ may adjust the negotiated cost-reimbursement rates up or down during the contract term in accordance with prior paid actual costs or a review of current costs verified by audit or fiscal review. DHS/\_\_\_\_\_ may make such a rate adjustment retroactive to the beginning of the contract. Cost-reimbursement rates for contracts awarded as a result of the competitive bidding process may not be adjusted or changed during the term of the Contract.

- c. **Legislatively Mandated Rate Changes in Unit of Service Contracts:** If legislative action requires a change in the service rates of the contract during the course of the contract period, DHS/\_\_\_\_\_ may advise the Contractor of the required change via written notice signed by an authorized representative of DHS/\_\_\_\_\_. The notice shall identify the services affected, the new rate for each service, and the effective date of the change. A notice issued pursuant to this paragraph shall constitute an amendment of the contract under Part I, Section E, paragraph 3, without the Contractor's signature.

3. **METHOD AND SOURCE OF CONTRACTOR PAYMENT:** To obtain payment for the services provided under this Contract, the Contractor shall submit to DHS/\_\_\_\_\_ an itemized billing for its authorized services, together with the supporting information required for the reimbursement forms supplied by DHS/\_\_\_\_\_. DHS/\_\_\_\_\_ shall then reimburse the Contractor by a warrant drawn against DHS or the State of Utah.

a. **Billings will be:**

*(Check ONE of these two options):*

- ☐ **Unit of Service (Rate-Based) Contracts:** Contractor shall use the DHS 520 Billing Form (except for DCFS non-custody clients, who may be billed on Form 1032). The Contractor shall bill DHS/\_\_\_\_\_ only for actual units of service delivered, and shall maintain records that adequately support delivery of such services.
- ☐ **Cost-Reimbursement Contracts:** Contractor shall use the DHS 1032 Billing Form. Contractor shall apply the federal and DHS cost principles referred to in

Part IV

Part V ("Cost Accounting Principles and Financial Reports"). The Contractor shall bill DHS/\_\_\_\_\_ only for actual costs allowable under federal and DHS cost principles, and shall maintain records that adequately support the allowability of these costs.

b. Other Instructions:

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4. **UNIFORM BILLING PRACTICES:** Contractor guarantees that the amounts it charges for services to clients under this Contract shall not be higher than the amounts the Contractor charges others for comparable services.

5. **BILLING FOR FIRST AND LAST DAYS:** DHS/\_\_\_\_\_ will reimburse the Contractor for both the first and last days of service for clients in Residential Care only if approved below.

*(Check ONE of these three options):*

- ☐ Approved ☐ Not Applicable  
☐ Not Approved

The level of compensation for the first and last days of service is specified in Paragraph 2 ("Payment Rates") of this Part IV ("Contract Costs, Billing and Payment Information").

6. **CLIENT ABSENCES (RESIDENTIAL CARE):** If Part II of this Contract ("Scope of Work and Special Conditions") provides that the Contractor may receive payment for client absences from a Residential Facility, the Contractor shall include appropriate information in the client's records (such as the reason for a client's absence and the client's whereabouts during that absence.) In addition, if Part II of this Contract requires the Contractor to obtain written approval from DHS/\_\_\_\_\_ in order to obtain payment for a client's absence, the Contractor shall include a copy of such approval in the client's records and billings.

Payment for client absences from a Residential Facility is prohibited in the following situations: (1) The client has left the Contractor's facility and there is no plan to return the client to the placement and therefore no need to hold the slot; or (2) the standard rate already includes a factor for absences.

7. **BILLING DEADLINES:** The Contractor shall submit all billings and claims for services rendered during a given billing period within twenty (20) days after the last date of that billing period. All final billings under a contract must be received within twenty (20) days of termination of the contract, regardless of the billing period. If the Contractor fails to meet these deadlines, DHS/\_\_\_\_\_ may deny payment for such delayed billings or claims for services.

The State Fiscal Year is from July 1 through June 30. The Contractor shall submit all billings for services performed on or before June 30<sup>th</sup> of a given fiscal year no later than July 20<sup>th</sup> of the following fiscal year, regardless of the termination date of the contract. DHS/\_\_\_\_\_ may delay or deny payment for services performed in a given fiscal year if it receives the Contractor's billing for those services later than July 20<sup>th</sup> of the following fiscal year.

8. **MATCHING FUNDS:** *(Applies only to contracts that require the Contractor to provide matching funds.)*

The Contractor shall provide the following "match" (***check all that apply***):

- ☐ In-kind services valued at \$\_\_\_\_\_. ☐ Not Applicable  
☐ Cash in the amount of \$\_\_\_\_\_.

9. **NON-FEDERAL MATCH:** For those contracts requiring a non-federal match, that match shall comply with the provisions of Title 45 of the Code of Federal Regulations, Part 74, Sub-part G. Other funding sources may require different non-federal match amounts, as shown in Paragraph 8 of this Part IV ("Contract Costs, Billing and Payment Information").
10. **OVERPAYMENTS, AUDIT EXCEPTIONS AND DISALLOWANCES:** If, during or after the contract period, an independent CPA audit or a fiscal review by DHS determines that the payments made by DHS/\_\_\_\_\_ to the Contractor were incorrectly paid or were based on incorrect information from the Contractor, DHS/\_\_\_\_\_ may amend the Contract and adjust the Contractor's payment rates for the remainder of the contract period or for any renewal period. Upon written request by DHS/\_\_\_\_\_, any excess payments are immediately due and payable by the Contractor. If this Contract includes a budget and if an independent CPA audit or DHS fiscal review determines that DHS/\_\_\_\_\_ has over-paid the Contractor for services under this Contract, the Contractor will immediately refund any excess payments to DHS/\_\_\_\_\_ upon written request if the audit or review determines that: (a) the Contractor's expenditures under this Contract are ineligible for reimbursement because they were not authorized by this Contract; or (b) the Contractor's expenditures are inadequately documented. The Contractor further agrees that DHS/\_\_\_\_\_ shall have the right to withhold any or all subsequent payments under this or other contracts with the Contractor until DHS/\_\_\_\_\_ fully recoups any overpayments made to the Contractor.
11. **PAYMENT WITHHOLDING:** The Contractor agrees that the reporting and record-keeping requirements specified in this Contract are a material element of performance, and that if DHS/\_\_\_\_\_ believes that the Contractor's record-keeping practices or reporting to DHS/\_\_\_\_\_ are not conducted in a timely and satisfactory manner, DHS/\_\_\_\_\_ may withhold part or all payments under this or any other contract until the Contractor remedies such deficiencies. DHS/\_\_\_\_\_ shall give the Contractor prior written notice that the payment(s) will be withheld, and the notice shall specify the reasons for the withholding the payment(s) and the actions the Contractor must take to bring about the release of the withheld payments.
12. **THIRD-PARTY RESOURCES:** In addition to funds received from DHS/\_\_\_\_\_, various other sources of funding, including Medicaid and private insurance, may be available to the Contractor for services delivered under this Contract. Income from other state, federal and county programs may also be available. All sources of funding other than funding received from DHS/\_\_\_\_\_ are referred to below as "third-party resources."

- a. **Principles and Requirements:** Where third-party resources are available, the parties are bound by the following principles and requirements:



- (1) The Contractor shall not obtain double recovery from DHS/\_\_\_\_\_ and third-party resources for services delivered under this Contract.
- (2) Except as specified in subsection (12)(b) below ("Exceptions to the Foregoing Principles and Requirements"), the Contractor shall seek payment from third-party resources for services delivered under this Contract.
- (3) Upon successful recovery of funds from third-party resources, Contractor shall reimburse DHS/\_\_\_\_\_ for the full amount of the recovery.
- (4) If the amount of the recovery is greater than the amount that the Contractor received from DHS/\_\_\_\_\_ for the service(s) covered by the recovery, the Contractor is required to reimburse DHS/\_\_\_\_\_ only for the actual amount that the Contractor received from DHS/\_\_\_\_\_ for the service(s) covered by the recovery.

**b. Exceptions to the Foregoing Principles and Requirements:**

- (1) *Medicaid Enhancement; Home and Community-Based Services.* Contractor shall not seek reimbursement from Medicaid if the client is eligible for Medicaid Enhancement or for Home and Community-Based Services. Instead, DHS/\_\_\_\_\_ will pay Contractor for services delivered, and DHS/\_\_\_\_\_ will bill the third-party resources directly, and the DHS Office of Recovery Services or Medicaid will then pursue reimbursement for amounts that DHS/\_\_\_\_\_ paid to Contractor for such services.
- (2) *No "Incentive Amount" for Cost Reimbursement Contracts.* No Incentive Amount is envisioned for cost reimbursement contracts. In such cost reimbursement contracts, the Contractor may bill DHS/\_\_\_\_\_ for the cost of collecting from third-party resources only if the Contractor provides DHS/\_\_\_\_\_ with adequate documentation to show that the costs were necessary, reasonable and actually incurred by the Contractor. The Contractor shall maintain financial records to support such costs for auditing purposes.

## **PART V: COST ACCOUNTING PRINCIPLES AND FINANCIAL REPORTS**

### **SECTION A: COST ACCOUNTING PRINCIPLES**

1. **CONTRACTOR'S COST ACCOUNTING SYSTEM:** Contractor agrees to maintain a financial and cost accounting system in accordance with the Generally Accepted Accounting Principles ("GAAP"), issued by the American Institute of Certified Public Accountants; or the "Governmental GAAP," issued by the United States Governmental Accounting Standards Board. An entity's accounting basis determines when transactions and economic events are reflected in its financial statements. An entity may record its accounting transactions and events on a cash basis, accrual basis, or modified accrual basis. In the cash basis of accounting, the entity recognizes its revenues and expenditures as cash is received. The accrual basis of accounting is concerned more with the process by which cash expended on resources and activities is returned as more (or perhaps less) cash to the enterprise, not just with the beginning or end of that process. The accrual basis includes the elements of deferral of costs, amortization and depreciation. The modified accrual basis is a mixture of both cash and accrual basis concepts. According to GAAP and Governmental GAAP, the cash method of accounting is not appropriate for governmental entities; the accrual basis and modified accrual basis of accounting are the preferred methods.

At a minimum, the Contractor's accounting system shall provide for a General Ledger, and cost accounting records adequate to assure that costs incurred under this Contract are reasonable, allocable to contract objectives, and separate from costs associated with other business activities of the Contractor.

2. **REQUIRED DOCUMENTATION:** Contractor agrees that all program expenditures and revenues shall be supported by reasonable documentation (such as vouchers, invoices, and receipts) which the Contractor shall store and file in a systematic and consistent manner. Contractor shall maintain all such records until six years after all audits initiated by federal and state auditors are completed, or for six (6) years from the date of termination of this Contract, whichever is longer.
3. **APPLICABLE COST PRINCIPLES:** Contractor shall comply with the Federal Cost Accounting Principles applicable to the contractor's type of business organization regardless of the source of contract funding. 'For-profit' organizations are required to follow the Federal Cost Accounting Principles for 'non-profit' organizations.
  - a. Federal Cost Principles determine allowable costs in DHS contracts. They can be found in circulars published by the Federal Office of Management and Budgets ("OMB"). Contractor may locate the Federal Cost Principles applicable to its organization at the internet web site:

**OMB Circulars:** <http://www.whitehouse.gov/omb/circulars/index.html>

- b. In addition to complying with Federal Cost Accounting Principles, Contractor must also comply with established DHS Cost Accounting Principles. Contractors may

obtain a copy of the DHS Cost Principles by contacting the DHS Bureau of Contract Management, 120 North 200 West #213, Salt Lake City, Utah 84103, or by accessing the DHS Bureau of Contract Management web site, currently at the following address:

[http://www.dhs.utah.gov/pol\\_reports.htm](http://www.dhs.utah.gov/pol_reports.htm) (select "*Bureau of Contract Management*"; select "*Contract Manual*"; select "*Section XII -DHS Cost Principles*")

For Contractor's convenience, DHS provides Table 1 below, "Cost Accounting Principles," as a reference guide to the applicable cost principles. However, the information in this table is not exhaustive, and Contractor understands that it is obligated to seek independent legal or accounting advice.

As shown in Table 1, "Cost Accounting Principles," the principles applicable to a particular contractor depend upon the contractor's legal status.

**Table 1: Cost Accounting Principles**

<b>Contractor</b>	<b>Federal Cost Principles</b>	<b>DHS Cost Accounting Principles</b>
State or Local Govt. & Indian Tribal Govts.	OMB Circular A-87	Applies to all contractors. <i>See</i> above web site.
Hospital	45 C.F.R. 74, App. E	Applies to all contractors. <i>See</i> above web site.
College or University	OMB Circular A-21	Applies to all contractors. <i>See</i> above web site.
Non-Profit Organization	OMB Circular A-122	Applies to all contractors. <i>See</i> above web site.
For-Profit Organization	OMB Circular A-122	Applies to all contractors. <i>See</i> above web site. (Note: DHS Cost Principles require for-profit contractors to apply the cost principles established by OMB Circular A-122.)

4. **ADMINISTRATION EXPENDITURES (Cost Reimbursement Contracts Only):** The Contractor's total administrative expenditures (*See* Part VI "Budgeting Principles and Forms", Section A(2)(a), Budget Category, "Administration") may not exceed twenty-five (25) percent of total program expenditures without prior written approval from the Executive Director of DHS or his/her designee.
5. **SERVICE CODE COST SUMMARY:** Upon request, the Contractor shall submit to DHS/\_\_\_\_\_ actual cost expenditures and specific service codes for the services provided by the Contractor under this Contract. DHS/\_\_\_\_\_ may review the Contractor's records and programs by requesting cost data as early as ninety-one (91) days after completion of the prior contract period. If the Contractor fails to submit the Cost Summaries within twenty (20) working days from the date of DHS/\_\_\_\_\_'s request, DHS/\_\_\_\_\_ may withhold payments on this or subsequent contracts with the Contractor until the Contractor submits the requested Cost Summaries. The Service Code Cost Summaries submitted by the Contractor are subject to review by DHS/\_\_\_\_\_. Cost Summaries shall agree in total (and in detail where

possible) with any other financial information that the Contractor submits to DHS/\_\_\_\_\_, including financial information such as audit reports, financial statements, and similar information. Cost Summaries which are inconsistent with other financial information submitted by the Contractor may be subject to further investigation by DHS/\_\_\_\_\_. The cost data shall be in the "Service Code Cost Summary" format provided by DHS/\_\_\_\_\_. The Contractor shall report the costs in accordance with federal and DHS cost principles, identified in this Section A ("Cost Accounting Principles"), and shall include only "allowable" costs data in submitting data to DHS/\_\_\_\_\_. In addition, upon request by DHS, the Contractor shall submit allowable cost data to DHS.

6. **PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA:** If any price, including any profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant sum because the Contractor furnished cost or pricing data (such as service code cost summaries, salary schedules or reports of prior-period costs) which was inaccurate, incomplete, and out-of-date, the price or cost shall be reduced accordingly and the Contract shall be modified in writing as necessary to reflect such reduction, and any amounts which DHS/\_\_\_\_\_ overpaid shall be subjected to overpayment assessments. Any action DHS/\_\_\_\_\_ may take in reference to such price reduction shall be independent of, and not be prejudicial to, DHS/\_\_\_\_\_'s right to terminate this agreement.

## **SECTION B: FINANCIAL REPORTING REQUIREMENTS**

### **1. GENERAL REQUIREMENTS:**

- a. **Definitions Used in this Part V ("Cost Accounting Principles and Financial Reports").** This Section B uses numerous accounting and financial terms. Section B (2) below sets forth the definitions for the most commonly-used terms, and Section B(4) below sets forth the definitions for additional terms used in this Section.
- b. **No Financial Reporting Requirements for Professionals Contracting in an Individual Capacity.** There are no federal, state, or DHS financial reporting requirements for individuals such as doctors, dentists, social workers, and other similar professionals contracting in an individual capacity to provide services to clients. Therefore, the financial reporting requirements discussed in this Section are not applicable to professionals contracting as individuals. (Note: Sole proprietors and limited liability companies owned by either one person or by a husband and wife are considered individuals for reporting requirement purposes. However, individuals associated with corporations, partnerships, or other contracting organizations **are not** individuals for reporting requirement purposes.)

Notwithstanding the lack of financial reporting requirements for individuals, contractors providing services in an individual capacity are still subject to financial review by the contracting agency and/or another DHS entity

- c. **No Financial Reporting Requirements for Contracting Organizations Receiving Less Than \$10,000 From DHS in a Single Fiscal Year.** Contracting organizations that receive less than \$10,000 from DHS in a single fiscal year have no financial

reporting requirement to DHS. However, they are still subject to financial review by the contracting agency and/or another DHS entity.

- d. **Financial Reporting Requirements for Out-of-State Organizations.** The financial reports of out-of-state organizations providing services to DHS clients outside the State of Utah will be accepted as submitted without regard to the financial reporting requirements applicable to in-state organizations. However, if the out-of-state organization is providing services to DHS clients in the State of Utah via a Utah based subsidiary, division, unit, or other entity included in the out-of-state organization's financial report, a separate **Statement of Functional Expenses** for the Utah based entity must accompany the report. If the Utah based entity is not included in the out-of-state organization's financial report, the same financial reporting requirements apply to the Utah based entity as apply to other in-state organizations.
- e. **Contractor's Compliance with Applicable Financial Laws.** The Contractor shall comply with all applicable federal and state laws regarding financial reports. The Contractor shall comply with all applicable requirements set forth in: (1) OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," published by the federal government; and (2) the State of Utah Legal Compliance Audit Guide ("SULCAG"), issued by the State Auditor's Office. For the Contractor's convenience, DHS has prepared Table 2 below, "Federal, State and DHS Financial Reporting Requirements," as a reference guide to the various financial reporting requirements. The information in this table is not exhaustive and the Contractor understands that it is obligated to seek independent legal or accounting advice. Contractor may access the applicable federal and state financial reporting requirements through the following Internet web sites (current as of December 2003):
  - (1) **OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations:** <http://www.whitehouse.gov/omb/circulars/index.html>
  - (2) **Utah Code:** [http://www.le.utah.gov/~code/TITLE51/51\\_01.htm](http://www.le.utah.gov/~code/TITLE51/51_01.htm)
  - (3) **Utah Administrative Rules:** <http://www.rules.utah.gov/publicat/code/r123/r123-005.htm>
  - (4) **SULCAG:** <http://www.sao.utah.gov/sulcag/Introduction.htm>
- f. **Additional Financial Reporting Requirements for DHS Contracts:** In addition to the financial reporting requirements set forth in OMB Circular A-133 and the SULCAG, this DHS Contract requires the Contractor to submit various financial reports to the DHS Bureau of Contract Management ("BCM"), as set forth in a separate column in Table 2 below, "Federal, State and DHS Financial Reporting Requirements."
- g. **The Entity Type and the Amount and Source of Government Funds Determines the Type of Financial Report Required.** Whether or not a contractor is required to obtain and submit an annual audit or other financial reports is determined by the contractor's entity type and the amount and source of government funds that the contractor expends during a given year. For example, if the contractor is a Non-profit

Organization and is a Subrecipient that expends \$500,000 or more in federal funds during a given year, the contractor is required by federal law to obtain and submit a Single Audit or Program-Specific Audit, as described in OMB Circular A-133.200. However, if that same contractor expended *less* than \$500,000 in federal funds in a given year, the contractor would be exempt from *federal* auditing requirements under OMB Circular A-133.200(d), yet still be subject to *State* auditing requirements such as those established under state statute (*e.g.*, Utah Code Ann. § 51-2a-201 *et seq.*: "Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities"), administrative rules promulgated by the State Auditor's Office (*see* Utah Admin. Code R. 123-5-1), and the SULCAG, issued by the State Auditor's Office.

Based on the SULCAG, DHS requires all contractors except sole proprietorships to submit an audit prepared according to "government auditing standards" whenever the contractor has \$350,000.00 or more in total revenues and 50% or more of those revenues come from government agencies (federal, state, county, and/or local, etc.). Unaudited reports may be required of contractors with total revenues under \$350,000.00 (see Table 2 below "Federal, State and DHS Financial Reporting Requirements").

- h. **Questioned Costs.** DHS may consider any unit of service billed by the Contractor to be a questioned cost if the unit of service billed is not supported by proper documentation verifying it was actually provided. DHS may seek recovery of questioned costs from the Contractor.
- i. **Changes in Federal or State Financial Reporting Requirements.** If Federal or State financial reporting requirements change during the course of the contract period, DHS/\_\_\_\_\_ may advise the Contractor of the changes via written notice signed by an authorized representative of DHS/\_\_\_\_\_. The notice shall specifically identify the new reporting requirement(s) and the effective date of the same. A notice issued pursuant to this paragraph shall constitute an amendment of the contract under Part I, Section E, paragraph 3, without the Contractor's signature.

2. **DEFINITIONS FOR AUDITING AND FINANCIAL TERMS USED IN THIS CONTRACT:**

- a. **"Federal Funds"** means Federal financial assistance that a contractor receives directly from Federal awarding agencies or indirectly from Pass-Through Entities. **NOTE: For purposes of this Part V, Medicaid funds are not considered to be "Federal Funds."**
- b. **"Government Funds"** means financial assistance that a contractor receives from a combination of government sources, including Federal awarding agencies, State appropriations and other local governments.
- c. **"OMB"** means the federal Executive Office of the President, Office of Management and Budget.
- d. **"OMB Circular"** means a publication issued by the OMB that sets forth federal cost accounting or auditing requirements.

- e. **"Pass-Through Entity"** means an entity (such as DHS/\_\_\_\_\_) which receives federal funds and then passes those funds through to Subrecipients, such as local governments and Non-Profit Organizations.
- f. **"Service Provider"** means a private or governmental entity that receives funds from DHS/\_\_\_\_\_ for services provided to DHS/\_\_\_\_\_’s clients under a program developed by DHS/\_\_\_\_\_.
- g. **"Subrecipient"** means a governmental entity or a non-profit or for-profit organization that develops and operates its own program of services for eligible clients, and that receives federal and/or state funds from DHS/\_\_\_\_\_ or another entity which serves as a "recipient" and "Pass-Through Entity" for such federal funding. (**State Funded Contracts.** If this Contract is funded solely by *State* funds, but the Contractor operates its own program of services for eligible clients, the Contractor shall comply with the financial record-keeping and reporting requirements that apply to federally-funded subrecipients.)
- h. **Additional definitions** to certain terms used in this Part V are provided in subsection B(4) below.

3. **CONTRACTOR'S SUBMISSION OF REQUIRED AUDITS AND OTHER FINANCIAL REPORTS:**

- a. **Deadlines:** The Contractor shall be bound by OMB Circular A-133 and the SULCAG submission deadlines for audits and financial reports. (*See also* Table 2 below, "Federal, State and DHS Auditing Requirements").

Where the Contractor is required to submit audits and financial reports to DHS under OMB Circular A-133, the SULCAG and DHS contract provisions, and the Contractor needs an extension for filing of such reports, the Contractor may request an extension by contacting BCM at the address below. However, Contractor understands that BCM can extend only those deadlines for reports Contractor is required to submit to DHS. Contractor must contact the Federal Clearinghouse, federal awarding agencies, and the State Auditor’s Office to obtain extensions of deadlines for submission of reports to those entities.

- b. **Addresses:** The Contractor shall submit all audits and financial reports to the entities identified in the applicable law, OMB Circular A-133 and the SULCAG. (*See also* Table 2 below, "Federal, State and DHS Auditing Requirements").

Where the Contractor is required to submit audits and financial reports to DHS under OMB Circular A-133, the SULCAG and DHS contract provisions, the Contractor shall submit the required audits and financial reports to the following address:

**Department of Human Services  
Bureau of Contract Management (BCM)  
120 North 200 West, #213  
Salt Lake City, UT 84103**

4. **ADDITIONAL DEFINITIONS USED IN THIS PART V:**

- a. **"Audit Findings"** means a schedule of all costs questioned by the auditor relative to Government Funds.
- b. **"Compliance Opinion"** means an auditor's opinion that Contractor has complied with all applicable auditing laws and requirements. Utah Code Ann. § 51-2-3 .
- c. **"Federal Clearinghouse"** means the federal clearinghouse designated by the OMB. As provided in OMB Circular A-133.320(i), "the address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10<sup>th</sup> Street, Jeffersonville, IN 4713."
- d. **"Financial Statements"** means financial reports of the Contractor's accounting records for a given fiscal year, prepared by an independent accountant or employee of the Contractor, including balance sheet, income and expense statement, statement of cash flows, the preparer's notes to the Financial Statements
- e. **"GAAP"** means Generally Accepted Accounting Principles, a combination of authoritative accounting principles, standards and procedures (set by policy boards). Usual statements in a financial statement include balance sheet, statement of income and expenses, statement of cash flows and notes to the financial statements.
- f. **"GAAS"** means Generally Accepted Auditing Standards, issued by the American Institute of Public Accountants (AICPA).
- g. **"GAS"** means Government Auditing Standards, issued by the Comptroller General of the United States, to be followed in audits of state and local governments and non-profit organizations that receive federal financial assistance. GAS is often referred to as Generally Accepted Government Auditing Standards ("GAGAS"). For financial statement audits, GAS/GAGAS incorporate the generally accepted standards issued by the AICPA.
- h. **"Management Letters"** means the auditor's notes and recommendations to the Contractor's management personnel subsequent to a fiscal audit.
- i. **"Non-profit Organization"** means a corporation or foundation which: (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; and (2) does not distribute any part of its income to its members, trustees, or officers.
- j. **"Program-Specific Audit"** means an audit of one specific federal program, using GAGAS standards, as described in OMB Circular A-133.200(c) and A-133.235.



- k. **"Reporting Package"** means the auditor's package of financial reports as defined in OMB Circular A-133, and shall include Financial Statements and Schedule of Expenditures of Government Funds, Summary Schedule of prior audit findings, Auditor's report(s), and corrective action plan.
- l. **"SULCAG"** means the State of Utah Legal Compliance Audit Guide issued by the State Auditor's Office.
- m. **"Schedule of Expenditures"** means a break-down of expenditures of Government Funds for a given year, showing the total administrative expenses as compared to funds expended for program services.
- n. **"Single Audit"** means an audit which includes both the Contractor's Financial Statements and the Federal awards using GAGAS standards, as described in OMB Circular A-133.500.
- o. **"Statement of Functional Expense"** means a breakdown of administration expenses and expenses attributed to actual program services on a program by program basis.
- p. **"Summary Schedule"** means a summary listing of all Audit Findings reported in the prior annual audit, and includes the Summary Schedule reported in the prior annual audit, except Audit Findings listed as corrected.

**Table 2: Federal, State and DHS Auditing Requirements**

Type of Entity	Amount of Annual Funding	Federal Audit and Reporting Requirements	State Audit and Reporting Requirements	DHS Contract Reporting Requirements	Submission Deadlines
Government Agency;  OR  Non-Profit Sub-recipient	<b>\$500,000</b> or more expended in Federal Funds	<p>Single Audit or Program Specific Audit, using GAGAS standards.</p> <p>(OMB Circular A-133.200, A-133.235, and A-133.500)</p> <p><b><u>Financial Reports Required from Contractor:</u></b></p> <p>1. <u>Data Collection Form</u> as described in OMB Circular A-133.320 (a), (b) and (d) -to Federal Clearinghouse</p> <p>2. <u>Reporting Package</u>- to: (a) Federal Clearinghouse (b) Each federal awarding agency - if audit disclosed Audit Findings or reported the status of any Audit Findings in the Summary Schedule</p> <p>(OMB Circular A-133.320 (c) and (d))</p> <p>3. <u>Submission by Subrecipients:</u> (a) "Reporting Package" to each Pass-Through Entity when Audit Findings were disclosed relating to federal awards; (b) "Written Notification" to each Pass-Through Entity when no Audit Findings were disclosed and a Reporting Package was not required.</p> <p>(OMB Circular A-133.320(e)(1) and (e)(2))</p>	<p><b>Non-Profit Organizations that receive 50% or more</b> of their funding from Government Funds <b>AND</b> all <b>governmental agencies</b> must submit the following audits and reports to the Utah State Auditor's Office:</p> <p>1. Copies of the entire <u>Single Audit or Program Specific Audit report</u></p> <p>2. The auditor's management letter, if the Single Audit or Program Audit report disclosed any Audit Findings.</p> <p>(The SULCAG provides that there are <b>NO reporting or auditing REQUIREMENTS for Non-Profit Organizations that receive LESS THAN 50%</b> of their total funding from <b>Government Funds</b>, regardless of the amount of funding.)</p>	<p>1. <b>As required by OMB Circular A-133, both government and non-profit Contractors shall provide to DHS the following:</b></p> <p>a. <u>Reporting Package</u> - if audit disclosed Audit Findings or reported the status of any prior Audit Findings in the Summary Schedule; or</p> <p>b. <u>Written Notification</u> - if audit did not disclose Audit Findings or report on the status of any prior Audit Findings in the Summary Schedule; <b>and</b></p> <p>2. <b>This Contract also requires Contractor to submit the following:</b></p> <p>a. <u>Auditor's Management Letter</u>; and</p> <p>b. Upon request by DHS, (1) <u>entire Single or Program Specific Audit report</u>; and (2) <u>Reporting Package</u> (if not already required by OMB Circular A-133) (3) For non-profit contractors, the statement of Functional Expenses.</p>	<p>1. Thirty (30) days after Contractor receives the auditor's reports, or nine (9) months after end of fiscal year audited, whichever occurs first.</p> <p>(OMB Circular A-133.320)</p> <p>2. The above deadlines also apply to submission of Single Audit or Specific Audit reports required by the Utah State Auditor's Office and this DHS Contract.</p>

Type of Entity	Amount of Annual Funding	Federal Audit and Reporting Requirements	State Audit and Reporting Requirements	DHS Contract Reporting Requirements	Submission Deadlines
Government Agency;  Non-Profit Sub-recipient;  OR  Non-Profit Service Provider	Less than <b>\$500,000</b> expended in Federal Funds, but <b>\$350,000</b> or more in total revenue	No audit required -- but records must be available for review or audit by Fed. Officials (OMB Circular A-133.200(d))	All <b>Non-Profit Organizations</b> that <b>receive 50% or more</b> of their funding from Government Funds <b>AND</b> all <b>governmental agencies</b> must submit the following audits and reports to the Utah State Auditor's Office:  a. Audited Financial Report using GAS/GAGAS (also know as "Yellow Book" standards.  b The auditor's management letter, if the GAS/GAGAS "Yellow Book" report disclosed any Audit Findings.  <i>See Also</i> Utah Code Ann. § 51-2-3 regarding records to be included in the Audit Report, compliance with State law, test work requirements, Compliance Opinion and other compliance issues.	<b>Government agencies and non-profit entities if 50% or more of the total funds received by non-profit Contractor are Government Funds:</b> 1. Copy of the Entire Audit Report required by the SULCAG; <b>and</b> 2. Auditor's Management Letter. 3. Statement of Functional Expenses.  <b>IF LESS THAN 50% of total funds received by a non-profit Contractor are from Government Funds</b> such that Contractor is not required by the SULCAG to submit any financial reports, DHS requires: 1. <u>Unaudited CPA Review</u> ; <b>and</b> 2. <u>Statement of Functional Expenses</u> .	Within six (6) months after end of Contractor's fiscal year  Utah Code Ann. § 51-2-2
	Less than <b>\$350,000</b> , but <b>\$200,000</b> or more in total revenue	<b>NO REQUIREMENTS</b>	All <b>Non-Profit Organizations</b> that <b>receive 50% or more</b> of their funding from Government Funds <b>AND</b> all <b>governmental agencies</b> must submit the following reports to the Utah State Auditor's Office:  <u>Unaudited CPA Review</u> .	<b>Government agencies and non-profit entities (if 50% or more of the total funds received by non-profit Contractor are Government Funds):</b> 1. <u>Unaudited CPA Review</u> ; and 2. <u>Statement of Functional Expenses</u>  <b>IF LESS THAN 50% of total funds received by a non-profit Contractor are from Government Funds:</b> 1. <u>Unaudited CPA Compilation</u> ; and 2. <u>Statement of Functional Expenses</u>	Within six (6) months after end of Contractor's fiscal year
	Less than <b>\$200,000</b> but <b>\$100,000</b> or more in total revenue	<b>NO REQUIREMENTS</b>	All <b>Non-Profit Organizations</b> that <b>receive 50% or more</b> of their funding from Government Funds <b>AND</b> all <b>governmental agencies</b> must submit the following reports to the Utah State Auditor's Office:  Unaudited CPA Compilation	All <b>Non-Profit Organizations</b> that <b>receive 50% or more</b> of their total funding from Government Funds <b>AND</b> all <b>governmental agencies:</b> 1. <u>Unaudited CPA Compilation</u> ; and 2. <u>Statement of Functional Expenses</u>  <b>IF LESS THAN 50% of the total funds received by a Non-Profit Organization</b> are from Government Funds: 1. <u>Unaudited Financial report</u> prepared according to GAAP; <b>AND</b> 2. <u>Statement of Functional Expenses</u>	Within six (6) months after end of Contractor's fiscal year

Type of Entity	Amount of Annual Funding	Federal Audit and Reporting Requirements	State Audit and Reporting Requirements	DHS Contract Reporting Requirements	Submission Deadlines
	Less than <b>\$100,000</b> but <b>\$10,000</b> or more in total revenue	<b>NO REQUIREMENTS</b>	All <b>Non-Profit Organizations</b> that <b>receive 50% or more</b> of their funding from Government Funds <b>AND</b> all <b>governmental agencies</b> must submit the following reports to the Utah State Auditor's Office:  Financial Information on the form approved by the State Auditor.	<b>All contractors:</b> Unaudited financial information, including, at a minimum: 1. <u>Balance sheet</u> ; and 2. <u>Income and Expenses Statement</u>	Within six (6) months after end of Contractor's fiscal year
<b>All Contracting Entities</b>	Less than <b>\$10,000</b> received from DHS in the Fiscal Year	<b>NO REQUIREMENTS</b>	All <b>Non-Profit Organizations</b> that <b>receive 50% or more</b> of their funding from Government Funds <b>AND</b> all <b>governmental agencies</b> must submit to the Utah State Auditor's Office, financial information on the form approved by the State Auditor	<b>NO REQUIREMENTS</b>	Within six (6) months after end of Contractor's fiscal year
<b>For-Profit Subrecipients; OR Service Providers</b>	Based upon the same funding level breakdowns as above	<b>NO REQUIREMENTS</b>	<b>NO REQUIREMENTS</b>	The non-profit reporting requirements identified above also apply to for-profit contractors with the following exceptions: 1. The reporting format required of non-profit contractors is not required. 2. The Independent Auditor's Report on State Legal Compliance is not required. 3. The financial reports of foreign organizations (organizations located outside the State of Utah) shall be accepted as prepared. 4. Local subsidiaries or divisions of an outside organization shall submit a <u>statement of functional expenses</u> in addition to the parent organization's financial report.	Within six (6) months after end of Contractor's fiscal year

## PART VI: BUDGETING PRINCIPLES AND FORMS

### SECTION A: BUDGET PRINCIPLES FOR THIS CONTRACT

*(Check ONE of these two options):*

1. ☐ This Contract does **not** require a budget plan from the Contractor.
2. ☐ This Contract **requires** a budget plan from the Contractor.
  - a. **CHANGES IN BUDGET (Cost Reimbursement Contracts Only):** The budget, presented in this Part VI, shall be the basis for DHS/\_\_\_\_\_'s payments to the Contractor. The Contractor may not make any adjustment in budgeted funds from Category III ("Program Expenses") to either Category I ("Administration") or Category II ("Capital Expenditures") or between Categories I and II, without prior written approval by DHS/\_\_\_\_\_.
  - b. **QUESTIONED COSTS:** DHS/\_\_\_\_\_ may consider any expenditures in excess of those budgeted in either Categories I or II as questioned costs that will normally require the Contractor to refund such excesses to DHS/\_\_\_\_\_. The Contractor may, however, shift between either Categories I or II to Category III without prior approval. Expenditures in excess of those budgeted in Category III will not normally result in questioned costs unless DHS/\_\_\_\_\_ has placed restrictions on subcategories within this major category. When this Contract restricts expenditures within defined subcategories, DHS/\_\_\_\_\_ will consider any unapproved excess to be a questioned cost.

### SECTION B: BUDGET FORMS

Insert Budget Statement forms here.

## **PART VII: SUMMARY OF SOME COMMONLY- APPLICABLE LAWS AND POLICIES**

### **SECTION A: COMPLIANCE WITH ADMINISTRATIVE GRANT REQUIREMENTS**

The Contractor is bound by federal law, which establishes various fiscal and administrative rules applicable to all entities that receive federal grant monies. These rules are published in OMB Circular A-110 and in the OMB Common Rule, which is codified in 45 C.F.R. Part 92 (1999) and 45 C.F.R. Part 74. *See* Section B for helpful web site addresses.

### **SECTION B: COMPLIANCE WITH GENERALLY APPLICABLE STATE AND FEDERAL LAWS**

As noted in Part I ("General Provisions") of this Contract, the Contractor is required to comply with all anti-discrimination and drug-free workplace laws, and all laws governing research involving human subjects. If Contractor is receiving state and federal funds under this Contract, certain state and federal requirements also apply, including the following federal laws: Equal Opportunity Employer Executive Order, the Davis-Bacon Act, the Hatch Act, the Copeland "Anti-Kickback" Act, the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act, the Federal Water Pollution Control Act, the Byrd Anti-Lobbying Amendment, and the Debarment and Suspension Executive Orders. Contractor shall comply with these laws and regulations to the extent they apply to the subject matter of this Contract and are required by the amount of state and federal funds involved in this Contract.

For Contractor's convenience, DHS/\_\_\_\_\_ provides Table 3, "Federal and State Laws and DHS Policies," as a reference guide to various laws and requirements. The information contained in this table is not exhaustive and the Contractor understands that it is obligated to seek independent legal advice in these matters.

The Contractor may locate the federal and state principles and requirements cited in this Section by accessing the following internet web sites (current as of December 2003):

- (a) **United States Code:** <http://uscode.house.gov/usc.htm>
- (b) **Code of Federal Regulations:** <http://www.access.gpo.gov/nara/cfr/index.html>
- (c) **Information About Public Laws, Executive Orders Of The President, And Other Federal Requirements:** <http://thomas.loc.gov>
- (d) **Utah Code:** <http://www.le.utah.gov/~code/code.htm>
- (e) **Utah Administrative Rules:** <http://www.rules.utah.gov/publicat/code.htm>
- (f) **DHS Policy Manual:** [http://www.dhs.utah.gov/pol\\_reports.htm](http://www.dhs.utah.gov/pol_reports.htm)

**Table 3: FEDERAL AND STATE LAWS AND DHS POLICIES**

Description of Act	Summary of Law	Applicable Federal Law	Applicable State Law
<b>Discrimination and Employment Related Laws</b>			
Equal Employment Opportunity	Prohibits discrimination in all construction contracts and subcontracts in excess of \$10,000.	Exec. Order No. 11246 (1965), as amended by Exec. Order No. 11375; 41 C.F.R. Part 60	
The Civil Rights Act of 1964, Title VI	Prohibits discrimination on the grounds of race, color, or national origin, from participation in, or denial of benefits under any program or activity receiving federal financial assistance.	45 C.F.R. Part 80	
The Civil Rights Act of 1964, Title VII	Prohibits employers from discriminating against employees on the basis of race, color, religion, national origin, and sex. Applies to employers of fifteen or more employees, and prohibits all discriminatory employment practices.	Pub. L. No. 88-352 42 U.S.C. § 2000e <i>et seq.</i>	
Rehabilitation Act of 1973, Section 504	Prohibits discrimination against qualified handicapped individuals from participation in, or denial of benefits under any program or activity receiving federal financial assistance.	29 U.S.C. § 701 <i>et seq.</i> ; 45 C.F.R. Part 84	
Americans with Disabilities Act of 1990; Section 504 of the Rehabilitation Act of 1973	Prohibit discrimination on the basis of disability.	42 U.S.C. § 12101 <i>et seq.</i> ; 29 U.S.C. § 794; 28 C.F.R. Part 35, Part 39	
Education Amendments of 1972, Title IX	Prohibits discrimination on the basis of sex, from participation in, or denial of benefits under any educational program or activity receiving federal financial assistance.	20 U.S.C. §§ 1681-1683, and 1685-1686; 45 C.F.R. Part 86	
Age Discrimination Act of 1975	Prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.	42 U.S.C. §§ 6101-6107; 45 C.F.R. Part 91	
Public Health Service Act, Section 526	Prohibits discrimination in the admission or treatment of drug abusers who suffer from medical conditions. Applies to private or public general hospitals that receive support in any form from a federally funded program, and to outpatient facilities receiving or benefiting from federal financial assistance.	45 C.F.R. Part 84	
Public Health Service Act, Section 522	Prohibits discrimination in the admission or treatment of alcohol abusers and alcoholics who suffer from medical conditions. Applies to private or public general hospitals that receive support in any form from a federally funded program, and to outpatient facilities receiving or benefiting from federal financial assistance.	45 C.F.R. Part 84	

Description of Act	Summary of Law	Applicable Federal Law	Applicable State Law
Utah Civil Rights Act	Prohibits discrimination on the basis of race, color, sex, religion, ancestry, or national origin by any business establishment, place of public accommodation, or enterprise regulated by the State of Utah. <i>See also</i> Utah Anti-Discrimination Act.		Utah Code Ann. § 13-7-1 <i>et seq.</i>
Utah Antidiscrimination Act -- (Includes the prohibition of unlawful harassment)	Prohibits employers from refusing to hire or promote, or from discharging, demoting, terminating, retaliating against, <b>harassing</b> , or discriminating in matters of compensation or in terms, privileges, and conditions of employment against any person because of race; color; sex; pregnancy, childbirth, or pregnancy related conditions; age, if individual is 40 years or older; religion; national origin; or disability. An "employer" is defined as the state; any political subdivision; a board, commission, department, institution, school district, trust, or agent of the state or its political subdivisions; or anyone employing 15 or more employees within the state, except religious organizations.		Utah Code Ann. § 34A-5-101, <i>et seq.</i>  ( <i>See also</i> Utah Executive Order March 17, 1993, which prohibits sexual harassment of state employees and employees of public and higher education)
Utah Occupational Safety and Health Act	Requires employers to provide a place of employment free from recognized hazards that are causing or are likely to cause death or physical harm. An "employer" is defined as the state; each county, city, town, and school district in the state; and every person, firm, and private corporation including public utilities, having one or more workers regularly employed in the same business or establishment.		Utah Code Ann. § 34A-6-101, <i>et seq.</i>
Drug-Free Workplace Requirements	Prohibits the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace, and permits drug testing of employees.	41 U.S.C. § 701 through 707, Drug Free Workplace Act of 1988	Utah Code Ann. § 34-41-101 <i>et seq.</i> ; Utah Code Ann. § 34-38-1 <i>et seq.</i> ; Utah Code Ann. § 67-19-36 <i>et seq.</i> ; Utah Admin. Code, R.477-14-1 <i>et seq.</i> ; and DHS Policy Manual, Policy No. 02-03.
Fair Labor Standards Act	Requires Contractor to comply with minimum wage requirements, child labor limitations, overtime limitations, and other labor standards.	29 U.S.C. § 201 <i>et seq.</i>	
Contract Work Hours and Safety Standards Act	Requires standard work week of 40 hours, and payment of overtime hours at time and a half. Applies to construction contracts awarded in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.	40 U.S.C. §§ 327-333; 29 C.F.R. Part 5	
Davis-Bacon Act	Requires Contractor to pay laborers and mechanics minimum wages as determined by the Secretary of Labor --applies to construction contracts in excess of \$2,000.	40 U.S.C. § 276a through a-7; 29 C.F.R. Part 5	



Description of Act	Summary of Law	Applicable Federal Law	Applicable State Law
Copeland Anti-Kickback Act	Prohibits Contractor from inducing employees to give up any part of the compensation to which they are entitled. Applies to contracts and subgrants for construction or repair in excess of \$2,000.	18 U.S.C. § 874; 40 U.S.C. § 276(c); 29 C.F.R. Part 3	
Employment Eligibility Verification	Requires Contractor to comply with the Immigration and Naturalization requirement to maintain a signed copy of the I-9 Employment Eligibility Verification Form for each employee.	8 U.S.C. § 1324a	
<b>Property Laws</b>			
National Environmental Policy Act of 1969 ("NEPA")	Establishes national policy goals and procedures to protect and enhance the environment. NEPA applies to all federal agencies and requires them to consider the probable environmental consequences of any major federal activity, including activities of other organizations operating with the concurrence or support of a federal agency. This includes grant-supported activities under this Contract if federal funds are involved.	42 U.S.C. § 4321 <i>et seq.</i> ; 40 C.F.R. Part 1500 <i>et seq.</i>	
Federal Clean Air Act	Provides for federal, state, regional, and local programs to prevent and control air pollution. Applies to contracts in excess of \$100,000.	42 U.S.C. § 7401 <i>et seq.</i>	
Federal Water Pollution Control Act	Provides for federal, state, regional, and local programs to prevent and control water pollution. Applies to contracts in excess of \$100,000.	33 U.S.C. § 1251 <i>et seq.</i>	
National Historic Preservation Act ("NHPA") of 1966	Requires a Contractor to assist the federal grantor agency in complying with the NHPA by: (1) consulting with the state Historic Preservation Officer in investigations to identify any properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects by the contemplated federally assisted undertaking; (2) notifying the federal grantor agency of the existence of any such properties; and (3) complying with all requirements established by the federal grantor agency to avoid or mitigate adverse effects upon such properties.	16 U.S.C. § 470, <i>et seq.</i> ; 36 C.F.R. Part 800, <i>et seq.</i>	
Utah Clean Air Act	Prohibits smoking in public places.		Utah Code Ann. § 26-38-1, <i>et seq.</i>
Flood Disaster Act of 1973 and other flood hazard provisions	Requires a Contractor to purchase flood insurance for any area having special flood hazards as a condition to receiving federal financial assistance.	42 U.S.C. § 4106	
Energy Policy and Conservation Act	Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issue in compliance with the federal Energy Policy and Conservation Act.	42 U.S.C. § 6322	

Description of Act	Summary of Law	Applicable Federal Law	Applicable State Law
<b>Miscellaneous</b>			
HIPAA	Establishes standards for the electronic transmission of health information and for protecting the privacy of health information maintained by health plans, health care providers, and health care clearinghouses.	Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Parts 160, 162, and 164	
Protection of Human Subjects	Requires basic protection of human subjects involved in Public Health Service grant supported research activities.	Public Health Service Act § 474(a); 42 U.S.C. § 2899; 45 C.F.R. Part 46	DHS Policy Manual, Policy No. 01-10.
Byrd Anti Lobbying Amendment	Requires certification by Contractor that it will not and has not used government appropriated funds to influence an officer or employee of any agency in connection with obtaining the contract, grant, or award. Applies to contracts in excess of \$100,000.	31 U.S.C. § 1352; 45 C.F.R. Part 93	Refer to Part VIII of this Contract ("Disclosure of Lobbying Activities")
Debarment and Suspension	Prohibits award of contracts to entities on list of debarred, suspended, or otherwise excluded entities.	45 C.F.R. Part 76; Exec. Order No. 12549; Exec. Order No. 12689	
Hatch Act	Prohibits certain employees of a state or local unit of government who work with federally financed programs from running for an elective office in partisan elections. The Act defines a covered officer or employee as "an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency."	5 U.S.C. § 1501, <i>et seq.</i>	Utah Code Ann. § 67-19-19
Abuse Reporting Requirements	Requires any person who learns of abuse to a child or to a vulnerable adult to report that abuse to law enforcement or to the appropriate division within DHS.		Utah Code Ann. § 62A-4a-403; Utah Code Ann. § 62A-3-302.
Conflicts of Interest - DHS employees-financial interest in Contractor's business.	Prohibits conflicts of interests, and requires Contractor to disclose any potential conflicts of interest.		Utah Code Ann. § 67-16-7(2); DHS Policy Manual, Policy No. 02-02.

## **PART VIII: DISCLOSURE OF LOBBYING ACTIVITIES**

Title 31 United States Code (USC) § 1352 requires Contractors with a contract in excess of \$100,000 to certify that they will not and have not used government appropriated funds to influence an officer or employee of any agency in connection with obtaining a contract, grant, or award. If Contractor meets the criteria for disclosure set forth in the above-cited section, Contractor shall complete and submit to the required federal entity, a Disclosure of Lobbying Activities form. Both this form and instructions for completing it can be found at the following website:

<http://www.whitehouse.gov/omb/grants/sfillin.pdf>

## **PART IX: JURISDICTION, COPYRIGHT, AND OTHER GENERAL PROVISIONS**

1. **CONTRACT JURISDICTION:** The provisions of this Contract shall be governed and interpreted according to the laws of the State of Utah.
2. **SEPARABILITY CLAUSE:** The declaration by any court or other binding adjudicative body that any provision of this Contract is illegal or void shall not affect the legality or enforceability of any other provision of this Contract unless such provisions are mutually dependent.
3. **COPYRIGHT OWNERSHIP AND ACKNOWLEDGING DHS IN ADVERTISING:**  
Except as otherwise expressly provided in this Contract or by state or federal law, DHS/\_\_\_\_\_ owns the copyright for all materials developed by the Contractor for DHS/\_\_\_\_\_, DHS or the State of Utah under this Contract. Nevertheless, if the Contractor develops any materials for its own uses or purposes in connection with this Contract, and if such materials are not required by this Contract or requested by DHS/\_\_\_\_\_ as part of the Contractor's performance of this Contract, DHS/\_\_\_\_\_ shall allow the Contractor to use those materials free of charge, without requiring the Contractor to obtain prior permission or a separate license. In addition, the Contractor is entitled to use the results and information generated in connection with this Contract for the Contractor's internal research and non-commercial uses, including scholarly publications and other non-commercial research purposes. In all written and oral discussions or advertising for the programs covered by this Contract (including all brochures, flyers, informational materials, interviews and talk shows), the Contractor shall acknowledge that DHS provided funding for the programs.
4. **DHS/\_\_\_\_\_ 'S AUTHORITY TO EXECUTE THIS CONTRACT:** DHS/\_\_\_\_\_ has the authority to enter into this Contract pursuant to state and federal laws, including state statutes relating to DHS (Title 62A of the Utah Code), the Utah Procurement Code (Title 63, Chapter 56 of the Utah Code), state procurement regulations (Section R33 of the Utah Administrative Code), and related statutes which permit DHS/\_\_\_\_\_ to purchase certain specified services.

5. **AUTHORITY OF PERSON SIGNING FOR THE CONTRACTOR:** The Contractor represents that the person who has signed this Contract on behalf of the Contractor has full legal authority to bind the Contractor and to execute this Contract.
6. **CONTRACTOR HAS NOT ALTERED THIS CONTRACT:** By signing this Contract, the Contractor represents that neither it nor its employees or representatives have in any way altered the language or provisions in the Contract, and that this Contract contains exactly the same provisions that appeared in this document and its exhibits when DHS/\_\_\_\_\_ originally sent it to the Contractor.
7. **CERTIFICATION REGARDING APPLICABLE LAWS:** The Contractor certifies that it has read this Contract, including Part I, Section C ("Contractor's Compliance with Applicable Laws") and Part VII ("Summary of Some Commonly-Applicable Laws and Policies"), and the Contractor agrees to comply with all applicable laws that govern its activities.

**IN WITNESS WHEREOF**, the parties executed this Contract:

**CONTRACTOR**

**DHS/** \_\_\_\_\_

**By:** \_\_\_\_\_  
Type or Print Name: \_\_\_\_\_  
Title/Position: \_\_\_\_\_  
Date: \_\_\_\_\_

**By:** \_\_\_\_\_  
Type or Print Name: \_\_\_\_\_  
Title/Position: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED AS TO PROCUREMENT**

**REGION**

**By:** \_\_\_\_\_  
Douglas G. Richins, Director  
State Division of Purchasing  
Date: \_\_\_\_\_

**By:** \_\_\_\_\_  
Type or Print Name: \_\_\_\_\_  
Title/Position: \_\_\_\_\_  
Date: \_\_\_\_\_

**By:** \_\_\_\_\_  
Rosalie Nance, Purchasing Agent  
DHS Bureau of Contract Management  
Date: \_\_\_\_\_

**APPROVED AS TO AVAILABILITY  
OF FUNDS**

**APPROVED**

**By:** \_\_\_\_\_  
Type or Print Name: \_\_\_\_\_  
Title/Position: \_\_\_\_\_  
Date: \_\_\_\_\_

**By:** \_\_\_\_\_  
Richard Barker, Contract Analyst  
State Division of Finance  
Date: \_\_\_\_\_